STATUTORY CONSTRUCTION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek E. Brown

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

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

17-3-8, Utah Code Annotated 1953

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

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

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

17-16-4, Utah Code Annotated 1953

17-16-9, as last amended by Laws of Utah 1993, Chapters 33 and 227

17-16-16, as last amended by Laws of Utah 1971, Chapter 25

17-16a-3, as enacted by Laws of Utah 1983, Chapter 46
17-16a-6, as last amended by Laws of Utah 1993, Chapter 227
17-18-1.9, as enacted by Laws of Utah 1993, Chapter 38
17-19-7, Utah Code Annotated 1953
17-19-14, Utah Code Annotated 1953
17-22-6, Utah Code Annotated 1953
17-22-21, Utah Code Annotated 1953
17-22-22, Utah Code Annotated 1953
17-22-23, Utah Code Annotated 1953
17-22-27, as last amended by Laws of Utah 2004, Chapter 301
17-23-16, as last amended by Laws of Utah 2001, Chapter 241
17-27a-513, as renumbered and amended by Laws of Utah 2005, Chapter 254
17-27a-518, as renumbered and amended by Laws of Utah 2005, Chapter 254
17-28-11, as last amended by Laws of Utah 1993, Chapter 227
17-30-8, as enacted by Statewide Initiative A, Nov. 8, 1960
17-30-22, as enacted by Statewide Initiative A, Nov. 8, 1960
17-31-3, as last amended by Laws of Utah 1996, Chapter 79
17-33-10, as last amended by Laws of Utah 2003, Chapter 65
17-33-15, as last amended by Laws of Utah 1993, Chapter 227
17-34-5, as last amended by Laws of Utah 2000, Chapter 199
17-35b-303, as last amended by Laws of Utah 2007, Chapter 329
17-35b-304, as enacted by Laws of Utah 1998, Chapter 369
17-36-10, as last amended by Laws of Utah 1999, Chapter 300
17-36-17, as last amended by Laws of Utah 1999, Chapter 300
17-37-4, as last amended by Laws of Utah 2002, Chapter 95
17-38-4, as last amended by Laws of Utah 1983, Chapter 291
17-41-301, as last amended by Laws of Utah 2006, Chapter 194
17-41-401, as last amended by Laws of Utah 1997, Chapter 383

17-52-401, as last amended by Laws of Utah 2003, Chapter 131

17-53-209, as renumbered and amended by Laws of Utah 2000, Chapter 133

17-53-311, as last amended by Laws of Utah 2008, Chapters 360 and 382

17B-1-304, as last amended by Laws of Utah 2009, Chapter 388

17B-1-506, as last amended by Laws of Utah 2008, Chapter 3

17B-1-510, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-512, as last amended by Laws of Utah 2009, Chapters 350 and 388

17B-1-607, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-2a-807, as last amended by Laws of Utah 2010, Chapter 281

17B-2a-818.5, as last amended by Laws of Utah 2010, Chapter 229

18-1-1, as last amended by Laws of Utah 1971, Chapter 29

19-1-206, as last amended by Laws of Utah 2010, Chapters 218 and 229

19-2-109.1, as last amended by Laws of Utah 2009, Chapters 183 and 377

19-2-113, as last amended by Laws of Utah 2010, Chapter 324

19-2-115, as last amended by Laws of Utah 2008, Chapter 382

19-3-302, as last amended by Laws of Utah 2001, Chapter 107

19-3-308, as last amended by Laws of Utah 2009, Chapter 183

19-4-112, as last amended by Laws of Utah 1998, Chapter 126

19-5-102, as last amended by Laws of Utah 2001, Chapter 274

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

19-5-116, as renumbered and amended by Laws of Utah 1991, Chapter 112

19-5-121, as last amended by Laws of Utah 2009, Chapter 183

19-6-108, as last amended by Laws of Utah 2007, Chapter 72

19-6-116, as renumbered and amended by Laws of Utah 1991, Chapter 112

19-6-202, as renumbered and amended by Laws of Utah 1991, Chapter 112

19-6-203, as renumbered and amended by Laws of Utah 1991, Chapter 112

19-6-205, as last amended by Laws of Utah 1993, Chapter 227

19-6-413, as last amended by Laws of Utah 1992, Chapter 214

19-6-714, as enacted by Laws of Utah 1993, Chapter 283

19-6-814, as renumbered and amended by Laws of Utah 2000, Chapter 51

19-9-105, as last amended by Laws of Utah 2008, Chapter 382

19-9-109, as renumbered and amended by Laws of Utah 2003, Chapter 184

19-10-104, as enacted by Laws of Utah 2003, Chapter 44

20A-1-401, as last amended by Laws of Utah 2008, Chapter 225

20A-1-508, as last amended by Laws of Utah 2010, Chapter 197

20A-1-509.1, as last amended by Laws of Utah 2010, Chapter 197

20A-1-703, as last amended by Laws of Utah 2010, Chapter 324

20A-2-102.5, as last amended by Laws of Utah 2008, Chapter 225

20A-2-105, as last amended by Laws of Utah 2008, Chapter 276

20A-2-306, as last amended by Laws of Utah 2007, Chapter 75

20A-4-201, as last amended by Laws of Utah 2006, Chapter 326

20A-5-403, as last amended by Laws of Utah 2009, Chapter 45

20A-6-302, as last amended by Laws of Utah 2006, Chapter 326

20A-7-202, as last amended by Laws of Utah 2008, Chapter 237

20A-7-204.1, as last amended by Laws of Utah 2010, Chapter 90

20A-7-702 (Superseded 01/01/12), as last amended by Laws of Utah 2008, Chapters 3, 82, and 225

20A-7-702 (Effective 01/01/12), as last amended by Laws of Utah 2008, Chapters 3, 82, 225, and 248

20A-7-706, as last amended by Laws of Utah 2008, Chapter 225

20A-9-403, as last amended by Laws of Utah 2008, Chapter 225

20A-11-401, as last amended by Laws of Utah 2009, Chapter 361

20A-11-1603, as enacted by Laws of Utah 2010, Chapter 12

20A-14-103, as last amended by Laws of Utah 2008, Chapter 8

20A-14-201, as last amended by Laws of Utah 2007, Chapter 215

20A-14-202, as last amended by Laws of Utah 2008, Chapter 8

22-1-11, Utah Code Annotated 1953
22-3-104, as enacted by Laws of Utah 2004, Chapter 285
22-3-202, as enacted by Laws of Utah 2004, Chapter 285
22-3-302, as enacted by Laws of Utah 2004, Chapter 285
22-3-303, as enacted by Laws of Utah 2004, Chapter 285
22-3-403, as enacted by Laws of Utah 2004, Chapter 285
22-3-405, as enacted by Laws of Utah 2004, Chapter 285
22-3-406, as enacted by Laws of Utah 2004, Chapter 285
22-3-411, as enacted by Laws of Utah 2004, Chapter 285
22-3-414, as enacted by Laws of Utah 2004, Chapter 285
22-3-505, as last amended by Laws of Utah 2009, Chapter 96
22-3-506, as enacted by Laws of Utah 2004, Chapter 285
22-3-601, as enacted by Laws of Utah 2004, Chapter 285
23-13-2, as last amended by Laws of Utah 2010, Chapter 256
23-13-17, as last amended by Laws of Utah 2005, Chapter 2
23-14-2, as last amended by Laws of Utah 2010, Chapter 286
23-15-2, as enacted by Laws of Utah 1971, Chapter 46
23-15-9, as last amended by Laws of Utah 2008, Chapter 69
23-16-3, as last amended by Laws of Utah 2003, Chapter 228
23-16-4, as last amended by Laws of Utah 2009, Chapter 183
23-17-4, as enacted by Laws of Utah 1971, Chapter 46
23-17-6, as last amended by Laws of Utah 1998, Chapter 242
23-17-8, as enacted by Laws of Utah 1971, Chapter 46
23-18-5, as last amended by Laws of Utah 1980, Chapter 28
23-19-9, as last amended by Laws of Utah 2008, Chapter 382
23-19-14, as last amended by Laws of Utah 2003, Chapter 171
23-19-17.5, as last amended by Laws of Utah 2007, Chapter 187
23-19-38.2, as last amended by Laws of Utah 2008, Chapter 382

23-20-1, as last amended by Laws of Utah 2002, Chapter 185
23-20-9, as last amended by Laws of Utah 2007, Chapter 136
23-20-14, as last amended by Laws of Utah 2000, Chapter 6
23-20-20, as last amended by Laws of Utah 2006, Chapter 325
23-20-28, as last amended by Laws of Utah 1995, Chapter 211
23-20-29, as enacted by Laws of Utah 1986, Chapter 67
23-20-30, as last amended by Laws of Utah 1995, Chapter 211
23-20-31, as last amended by Laws of Utah 2009, Chapter 256
23-21-2, as last amended by Laws of Utah 1993, Chapter 227
23-22-1, as last amended by Laws of Utah 1998, Chapter 140
23-22-3, as last amended by Laws of Utah 1992, Chapter 260
23-23-11, as last amended by Laws of Utah 1997, Chapter 258
23-24-1, as last amended by Laws of Utah 2010, Chapter 289
24-1-8, as last amended by Laws of Utah 2007, Chapter 180
25-5-2, as last amended by Laws of Utah 1995, Chapter 20
25-6-9, as last amended by Laws of Utah 2000, Chapter 252
26-1-5, as last amended by Laws of Utah 2008, Chapter 382
26-1-7.5, as last amended by Laws of Utah 2010, Chapter 286
26-1-11, as enacted by Laws of Utah 1981, Chapter 126
26-1-25, as enacted by Laws of Utah 1981, Chapter 126
26-1-32, as enacted by Laws of Utah 1981, Chapter 126
26-3-8, as enacted by Laws of Utah 1981, Chapter 126
26-4-2, as last amended by Laws of Utah 2009, Chapter 223
26-4-9, as last amended by Laws of Utah 1999, Chapter 289
26-4-12, as last amended by Laws of Utah 2000, Chapter 86
26-4-20, as last amended by Laws of Utah 1993, Chapter 38
26-6-3, as last amended by Laws of Utah 2008, Chapter 130
26-6-18, as enacted by Laws of Utah 1981, Chapter 126

26-6-20, as last amended by Laws of Utah 2000, Chapter 86
26-6b-3, as last amended by Laws of Utah 2008, Chapter 115
26-6b-3.1, as enacted by Laws of Utah 2006, Chapter 185
26-7-1, as enacted by Laws of Utah 1981, Chapter 126
26-8a-103, as last amended by Laws of Utah 2010, Chapter 286
26-8a-203, as last amended by Laws of Utah 2000, Chapter 305
26-8a-207, as last amended by Laws of Utah 2010, Chapter 161
26-8a-253, as last amended by Laws of Utah 2006, Chapter 310
26-8a-405.2, as last amended by Laws of Utah 2010, Chapter 187
26-8a-405.3, as last amended by Laws of Utah 2010, Chapter 187
26-8a-405.5, as enacted by Laws of Utah 2010, Chapter 187
26-8a-406, as last amended by Laws of Utah 2009, Chapter 388
26-8a-408, as enacted by Laws of Utah 1999, Chapter 141
26-8a-410, as enacted by Laws of Utah 1999, Chapter 141
26-8a-413, as last amended by Laws of Utah 2003, Chapter 213
26-10b-102, as renumbered and amended by Laws of Utah 2010, Chapter 340
26-15-8, as last amended by Laws of Utah 2006, Chapter 91
26-18-3, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
26-18-4, as last amended by Laws of Utah 2008, Chapter 62
26-18-5, as last amended by Laws of Utah 1988, Chapter 21
26-18-10, as last amended by Laws of Utah 2008, Chapter 62
26-18-11, as enacted by Laws of Utah 1988, Chapter 12
26-18-501, as enacted by Laws of Utah 2004, Chapter 215
26-18-502, as enacted by Laws of Utah 2004, Chapter 215
26-18-503, as last amended by Laws of Utah 2008, Chapter 347
26-18-505, as enacted by Laws of Utah 2008, Chapter 219
26-19-7, as last amended by Laws of Utah 2005, Chapter 103
26-19-8, as last amended by Laws of Utah 2007, Chapter 64

26-20-3, as last amended by Laws of Utah 1986, Chapter 46

26-20-6, as last amended by Laws of Utah 1986, Chapter 46

26-20-8, as enacted by Laws of Utah 1981, Chapter 126

26-20-9.5, as last amended by Laws of Utah 2007, Chapter 48

26-20-12, as repealed and reenacted by Laws of Utah 2007, Chapter 48

26-20-14, as enacted by Laws of Utah 2007, Chapter 48

26-21-9, as last amended by Laws of Utah 2000, Chapter 86

26-21-9.5, as last amended by Laws of Utah 2009, Chapter 267

26-23-7, as enacted by Laws of Utah 1981, Chapter 126

26-23-10, as enacted by Laws of Utah 1981, Chapter 126

26-23b-104, as enacted by Laws of Utah 2002, Chapter 155

26-25-5, as last amended by Laws of Utah 1991, Chapter 241

26-28-105, as enacted by Laws of Utah 2007, Chapter 60

26-28-106, as enacted by Laws of Utah 2007, Chapter 60

26-28-107, as enacted by Laws of Utah 2007, Chapter 60

26-28-111, as enacted by Laws of Utah 2007, Chapter 60

26-28-114, as enacted by Laws of Utah 2007, Chapter 60

26-28-120, as enacted by Laws of Utah 2007, Chapter 60

26-28-121, as last amended by Laws of Utah 2008, Chapter 32

26-28-124, as enacted by Laws of Utah 2007, Chapter 60

26-31-1, as enacted by Laws of Utah 1981, Chapter 126

26-33a-104, as last amended by Laws of Utah 2008, Chapter 382

26-33a-106.5, as last amended by Laws of Utah 2005, Chapter 266

26-33a-111, as enacted by Laws of Utah 1990, Chapter 305

26-34-2, as last amended by Laws of Utah 2007, Chapter 306

26-35a-107, as enacted by Laws of Utah 2004, Chapter 284

26-36a-102, as enacted by Laws of Utah 2010, Chapter 179

26-36a-203, as enacted by Laws of Utah 2010, Chapter 179

26-40-110, as last amended by Laws of Utah 2010, Chapter 351

26-41-104, as last amended by Laws of Utah 2008, Chapters 64 and 382

26-47-103, as last amended by Laws of Utah 2010, Chapter 323

26-49-202, as enacted by Laws of Utah 2008, Chapter 242

26-49-701, as enacted by Laws of Utah 2008, Chapter 242

26A-1-112, as last amended by Laws of Utah 2002, Chapter 249

26A-1-126, as enacted by Laws of Utah 2005, Chapter 153

29-1-2, as enacted by Laws of Utah 1953, Chapter 47

29-1-3, as enacted by Laws of Utah 1953, Chapter 47

30-1-4.5, as last amended by Laws of Utah 2004, Chapter 261

30-1-5, as last amended by Laws of Utah 2001, Chapter 129

30-1-10, Utah Code Annotated 1953

30-1-32, as last amended by Laws of Utah 1993, Chapter 227

30-1-33, as enacted by Laws of Utah 1971, Chapter 64

30-1-35, as enacted by Laws of Utah 1971, Chapter 64

30-1-37, as enacted by Laws of Utah 1971, Chapter 64

30-2-7, Utah Code Annotated 1953

30-3-16.7, as enacted by Laws of Utah 1969, Chapter 72

30-3-17, as last amended by Laws of Utah 1969, Chapter 72

30-3-17.1, as last amended by Laws of Utah 2008, Chapter 3

30-3-18, as last amended by Laws of Utah 1997, Chapter 215

30-3-33, as last amended by Laws of Utah 2008, Chapter 146

30-8-3, as enacted by Laws of Utah 1994, Chapter 105

31A-2-301, as last amended by Laws of Utah 1987, Chapters 91 and 161

31A-2-302, as last amended by Laws of Utah 2008, Chapter 382

31A-5-208, as last amended by Laws of Utah 1991, Chapter 5

31A-5-305, as last amended by Laws of Utah 2007, Chapter 309

31A-6a-104, as last amended by Laws of Utah 2008, Chapter 345

31A-8a-201, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-203, as last amended by Laws of Utah 2008, Chapter 382
31A-8a-204, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-205, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-206, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-207, as enacted by Laws of Utah 2005, Chapter 58
31A-9-503, as enacted by Laws of Utah 1985, Chapter 242
31A-11-107, as last amended by Laws of Utah 2003, Chapter 298
31A-15-203, as enacted by Laws of Utah 1992, Chapter 258
31A-15-207, as last amended by Laws of Utah 2003, Chapter 298
31A-15-210, as last amended by Laws of Utah 2003, Chapter 298
31A-17-503, as last amended by Laws of Utah 2008, Chapter 382
31A-17-506, as last amended by Laws of Utah 2010, Chapter 324
31A-17-507, as last amended by Laws of Utah 2001, Chapter 116
31A-17-510, as enacted by Laws of Utah 1993, Chapter 305
31A-17-512, as enacted by Laws of Utah 1993, Chapter 305
31A-18-106, as last amended by Laws of Utah 2008, Chapter 257
31A-19a-206, as renumbered and amended by Laws of Utah 1999, Chapter 130
31A-19a-208, as renumbered and amended by Laws of Utah 1999, Chapter 130
31A-19a-309, as renumbered and amended by Laws of Utah 1999, Chapter 130
31A-21-101, as last amended by Laws of Utah 2006, Chapter 197
31A-21-312, as last amended by Laws of Utah 1986, Chapter 204
31A-21-313, as last amended by Laws of Utah 2008, Chapter 3
31A-21-403, as last amended by Laws of Utah 2001, Chapter 116
31A-22-305, as last amended by Laws of Utah 2010, Chapter 354
31A-22-408, as last amended by Laws of Utah 1987, Chapter 91
31A-22-610.5, as last amended by Laws of Utah 2010, Chapter 10
31A-22-611, as last amended by Laws of Utah 2006, Chapter 188

31A-22-613.5, as last amended by Laws of Utah 2010, Chapters 68, 149 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 149

31A-22-618.5, as last amended by Laws of Utah 2010, Chapter 68

31A-22-625, as last amended by Laws of Utah 2010, Chapters 10 and 68

31A-22-634, as enacted by Laws of Utah 2003, Chapter 188

31A-22-636, as enacted by Laws of Utah 2009, Chapter 11

31A-22-637, as enacted by Laws of Utah 2009, Chapter 11

31A-22-716, as last amended by Laws of Utah 2005, Chapter 71

31A-22-722.5, as last amended by Laws of Utah 2010, Chapters 10, 149 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 149

31A-22-723, as last amended by Laws of Utah 2010, Chapter 68

31A-22-806, as last amended by Laws of Utah 2001, Chapter 116

31A-22-1406, as enacted by Laws of Utah 1991, Chapter 243

31A-22-1409, as last amended by Laws of Utah 2001, Chapter 116

31A-23a-501, as last amended by Laws of Utah 2010, Chapter 10

31A-23a-602, as renumbered and amended by Laws of Utah 2003, Chapter 298

31A-23a-702, as renumbered and amended by Laws of Utah 2003, Chapter 298

31A-23a-806, as renumbered and amended by Laws of Utah 2003, Chapter 298

31A-27a-202, as enacted by Laws of Utah 2007, Chapter 309

31A-27a-205, as enacted by Laws of Utah 2007, Chapter 309

31A-27a-502, as enacted by Laws of Utah 2007, Chapter 309

31A-27a-701, as enacted by Laws of Utah 2007, Chapter 309

31A-30-107.3, as last amended by Laws of Utah 2007, Chapter 307

31A-30-107.5, as last amended by Laws of Utah 2007, Chapter 307

31A-30-110, as last amended by Laws of Utah 2002, Chapter 308

31A-30-206, as enacted by Laws of Utah 2009, Chapter 12

31A-34-104, as last amended by Laws of Utah 2009, Chapter 183

31A-34-107, as enacted by Laws of Utah 1996, Chapter 143

31A-36-107, as last amended by Laws of Utah 2009, Chapter 355

31A-36-109, as last amended by Laws of Utah 2009, Chapter 355

31A-36-110, as last amended by Laws of Utah 2009, Chapter 355

31A-36-112, as last amended by Laws of Utah 2009, Chapter 355

31A-36-114, as last amended by Laws of Utah 2009, Chapter 355

31A-37-105, as enacted by Laws of Utah 2003, Chapter 251

31A-37-106, as last amended by Laws of Utah 2008, Chapters 302 and 382

31A-37-202, as last amended by Laws of Utah 2009, Chapter 183

31A-37-301, as last amended by Laws of Utah 2004, Chapter 312

31A-37-302, as enacted by Laws of Utah 2003, Chapter 251

31A-37-306, as last amended by Laws of Utah 2004, Chapter 312

31A-37-402, as last amended by Laws of Utah 2008, Chapter 302

31A-37-601, as enacted by Laws of Utah 2004, Chapter 312

31A-37a-205, as enacted by Laws of Utah 2008, Chapter 302

32B-1-407 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

32B-1-505 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

32B-6-407 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

32B-8-304 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

34-19-1, as enacted by Laws of Utah 1969, Chapter 85

34-19-9, as enacted by Laws of Utah 1969, Chapter 85

34-19-10, as enacted by Laws of Utah 1969, Chapter 85

34-19-13, as enacted by Laws of Utah 1969, Chapter 85

34-20-3, as last amended by Laws of Utah 2010, Chapter 286

34-20-5, as enacted by Laws of Utah 1969, Chapter 85

34-20-8, as enacted by Laws of Utah 1969, Chapter 85

34-23-208, as renumbered and amended by Laws of Utah 1990, Chapter 8

34-25-2, as enacted by Laws of Utah 1969, Chapter 85

34-28-5, as last amended by Laws of Utah 1995, Chapter 17

34-28-6, as enacted by Laws of Utah 1969, Chapter 85
34-28-14, as last amended by Laws of Utah 1996, Chapter 240
34-29-1, as enacted by Laws of Utah 1969, Chapter 85
34-32-4, as last amended by Laws of Utah 2004, Chapter 220
34-34-2, as enacted by Laws of Utah 1969, Chapter 85
34-34-15, as enacted by Laws of Utah 1969, Chapter 85
34-36-3, as enacted by Laws of Utah 1969, Chapter 85
34-41-106, as last amended by Laws of Utah 1997, Chapter 375
34A-1-408, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-1-409, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-2-413, as last amended by Laws of Utah 2010, Chapter 59
34A-2-802, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-3-104, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-6-108, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-6-202, as last amended by Laws of Utah 2008, Chapter 382
34A-6-301, as last amended by Laws of Utah 2008, Chapters 3 and 382
34A-7-102, as last amended by Laws of Utah 2006, Chapter 155
35A-3-106, as renumbered and amended by Laws of Utah 1997, Chapter 174
35A-3-108, as last amended by Laws of Utah 1998, Chapter 188
35A-3-304, as last amended by Laws of Utah 2007, Chapter 81
35A-3-310.5, as enacted by Laws of Utah 2008, Chapter 59
35A-3-503, as renumbered and amended by Laws of Utah 1997, Chapter 174
35A-4-303, as last amended by Laws of Utah 2008, Chapter 110
35A-4-304, as last amended by Laws of Utah 2008, Chapter 382
35A-4-305, as last amended by Laws of Utah 2010, Chapter 278
35A-4-309, as last amended by Laws of Utah 2006, Chapter 22
35A-4-311, as last amended by Laws of Utah 2001, Chapter 265
35A-4-404, as renumbered and amended by Laws of Utah 1996, Chapter 240

35A-4-501, as last amended by Laws of Utah 2010, Chapters 277 and 278

35A-4-506, as last amended by Laws of Utah 2010, Chapters 277 and 278

55-5-2, Utah Code Annotated 1953

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

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

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

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

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

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

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

17-3-8. Prior offenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the person elected shall:

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

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

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

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

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

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

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

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

on the next business day.

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

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

17-16-16. Commissioners' traveling expenses.

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

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

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

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

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

17-16a-3. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-19-7. Current accounts with treasurer.

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

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

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

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

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

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

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

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

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

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

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

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

17-22-22. Process to be exhibited.

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

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

17-22-23. Crier of court.

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

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

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

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

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

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

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

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

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

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

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

17-23-16. Resurveys.

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

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

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

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

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

17-27a-513. Manufactured homes.

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

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

(3) A county may not:

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

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

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

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

(1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

through 17-31-5.

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

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

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

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

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

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

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

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

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

assistance.

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

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

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

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

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

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

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

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

(2) To implement Subsection (1):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with the consent of the continuing municipalities have power to extend on a countywide basis any governmental service or function which is authorized by law or which the previous county, cities, and other local public agencies included in them were empowered to provide for their residents. No such service, however, shall be provided within an incorporated municipality which continues to provide that such service for its own inhabitants, except upon a contract basis for the municipality. No taxes, assessments, fees, or other charges shall be extended or collected by the consolidated government within any municipality for the purpose of financing any service which is not provided by the consolidated government within the municipality. "Largest city," as used in this section, means a city or cities the population of which, as shown by the most recent decennial or special census, exceeds 35% of the total county population.

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

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

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

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

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

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

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

17-36-10. Preparation of tentative budget.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-38-4. Nontermination of taxing power.

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

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

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

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

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

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

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

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

(2) The proposal shall identify:

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

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

(c) for each parcel of land:

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

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

(iii) the number of acres of each parcel.

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

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

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

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

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

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

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

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

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

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

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

(1) Each optional plan proposed under this chapter:

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

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

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

county government;

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

(iii) continuity of existing ordinances and regulations;

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

(v) making of interim and temporary appointments; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-53-209. Records to be kept.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) require the private contractor to:

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

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

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

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

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

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

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

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

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

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

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

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

(b) The appointing authority shall:

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

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

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

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

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

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

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

(b) The appointing authority shall:

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

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

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

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

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

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

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

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

17B-1-506. Withdrawal petition requirements.

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

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

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

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

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

(e) state the reasons for withdrawal; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) rejecting the withdrawal.

(b) Each resolution approving a withdrawal shall:

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

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

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

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

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

district if the board of trustees determines that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

trustees.

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

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

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

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

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

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

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

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

immediately before the list is provided to the local district.

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

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

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

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

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

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

(ii) The engineering consultant shall allocate:

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

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

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

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

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

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

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

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

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

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

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

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

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

revenue bonds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the original:

(I) notice of an impending boundary action;

(II) certificate of withdrawal; and

(III) approved final local entity plat; and

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

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

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

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

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

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

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

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

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

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

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

(i) the name of the local district;

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

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

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

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

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

provided in Subsection (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) 11 members:

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

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

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

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

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

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

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

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

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

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

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

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

(g) (i) The number of voting members appointed from a county and municipalities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) one member appointed by the governor.

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

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

(ii) A person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

(II) dental coverage is not required; and

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

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

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

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

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

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

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

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the public transit district on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

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

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

(3) This section does not apply if:

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

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

(c) the contract is an emergency procurement.

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

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

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

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

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

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

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

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

(6) The public transit district shall adopt ordinances:

(a) in coordination with:

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

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

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

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

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

(b) which establish:

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

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

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

(I) the Utah Insurance Department;

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

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

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

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

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

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

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

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

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

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

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

(I) actuary; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

(II) dental coverage is not required; and

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

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

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

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

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

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

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

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

accordance with Subsection (2)(b).

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

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

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

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

(b) the contract or agreement is between:

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

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

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

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

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

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

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

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

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

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

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

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

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

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

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

(c) which establish:

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

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

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

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

(I) the Utah Insurance Department;

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

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

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

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

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

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

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

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

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

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

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

(I) an actuary; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Emissions fees for the period:

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

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

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

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

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

(b) revoke the operating permit.

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

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

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

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

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

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

(a) the applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) an applicable standard or limitation;

(b) a permit condition; or

(c) a fee or filing requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

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

19-3-302. Legislative intent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19-5-102. Definitions.

As used in this chapter:

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

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

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

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

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

(b) generates or manages sewage sludge.

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

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

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

(8) "Point source":

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Waters of the state":

(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Section 56. Section **19-5-115** is amended to read:

19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules

of political subdivisions.

(1) The terms "knowingly," "willfully," and "criminal negligence" [~~shall mean~~] are as defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed $10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding $25,000 per day who with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed $50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding $10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or

by any permit, rule, or order issued under it; or

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.

(5) (a) As used in this section:

(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than $250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

(ii) knows at that time that he is placing another person in imminent danger of death or serious bodily injury.

(c) If a person is an organization, it shall, upon conviction of violating Subsection (5)[~~(a)~~](b), be subject to a fine of not more than $1,000,000.

(d) (i) A defendant who is an individual is considered to have acted knowingly if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)(e) and [~~must~~] shall prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The board may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and its executive secretary and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the board, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the executive secretary issued under this chapter.

(c) The board may itself initiate any action under this section and be represented by the attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the board may, through its executive secretary,

initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 57. Section **19-5-116** is amended to read:

19-5-116. Limitation on effluent limitation standards for BOD, SS, Coliforms, and pH for domestic or municipal sewage.

Unless required to meet instream water quality standards or federal requirements established under the federal Water Pollution Control Act, the board [~~shall not~~] may not establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal sewage which are more stringent than the following:

(1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period [~~shall not~~] may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on effluent samples collected during any 30-day period [~~shall not~~] may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in effluent samples collected during any 30-day period [~~shall not~~] may not exceed either 2000/100

ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any seven-day period [~~shall not~~] may not exceed 2500/100 ml for total coliforms or 250/100 for fecal coliforms.

(4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

Section 58. Section **19-5-121** is amended to read:

19-5-121. Underground wastewater disposal systems -- Certification required to design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules -- Fees.

(1) As used in this section, "maintain" does not include the pumping of an underground wastewater disposal system.

(2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002, a person may not design, inspect, maintain, or conduct percolation or soil tests for an underground wastewater disposal system, without first obtaining certification from the board.

(b) An individual is not required to obtain certification from the board to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

(c) The board shall make rules allowing an uncertified individual to conduct percolation or soil tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

(i) has the capability of properly conducting the tests; and

(ii) is supervised by a certified individual when conducting the tests.

(3) (a) The board shall adopt and enforce rules for the certification and recertification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

(b) (i) The rules shall specify requirements for education and training and the type and duration of experience necessary to obtain certification.

(ii) The rules shall recognize the following in meeting the requirements for certification:

(A) the experience of a contractor licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who has five or more years of experience installing underground wastewater disposal systems;

(B) the experience of an environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act; or

(C) the educational background of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(iii) If eligibility for certification is based on experience, the applicant for certification [~~must~~] shall show proof of experience.

(4) The department may establish fees in accordance with Section 63J-1-504 for the testing and certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

Section 59. Section **19-6-108** is amended to read:

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in

the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) (i) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the executive secretary for an operation plan for that facility or site.

(ii) (A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the executive secretary information, a report, a plan, or other request for approval for a proposed activity under an operation plan:

(I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and

(II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.

(B) The executive secretary may not:

(I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or

(II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.

(b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the executive secretary for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until [~~he~~] the person receives, in addition to and subsequent to local government approval and subsequent to the approval required in Subsection (3)(a), approval by the governor and the Legislature.

(ii) Facilities referred to in Subsection (3)(c)(i) are:

(A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities; and

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The executive secretary shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that [~~he~~] the executive secretary cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The executive secretary shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The executive secretary shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the executive secretary shall approve

or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the executive secretary shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the executive secretary shall issue a notice of completeness.

(ii) If the plan is determined by the executive secretary to be incomplete, [~~he~~] the executive secretary shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The executive secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the executive secretary shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any

facility, the executive secretary determines that the proposed plan, or any part of it, will not comply with applicable rules, the executive secretary shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the board determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) No proposed nonhazardous solid or hazardous waste operation plan may be approved unless it contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the executive secretary determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the executive secretary considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board; and

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit.

(10) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:

(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and

(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and

(iv) whether any other available site or method for the management of hazardous waste

would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the executive secretary determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The executive secretary shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.

(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the executive secretary, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as

hazardous waste in the state where it is generated and which is received for disposal in this state [~~shall not~~] may not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the executive secretary.

(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

Section 60. Section **19-6-116** is amended to read:

19-6-116. Application of part subject to state assumption of primary responsibility from federal government -- Authority of political subdivisions.

(1) The requirements of this part applicable to the generation, treatment, storage, or disposal of hazardous waste, and the rules adopted under this part, [~~shall not~~] do not take effect until this state is qualified to assume, and does assume, primacy from the federal government for the control of hazardous wastes.

(2) This part does not alter the authority of political subdivisions of the state to control solid and hazardous wastes within their local jurisdictions so long as any local laws, ordinances, or rules are not inconsistent with this part or the rules of the board.

Section 61. Section **19-6-202** is amended to read:

19-6-202. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.

(3) "Hazardous wastes" means wastes as defined in Section 19-6-102.

(4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site used or intended to be used for the treatment, storage, or disposal of hazardous waste materials,

including [~~but not limited to~~] physical, chemical, or thermal processing systems, incinerators, and secure landfills.

(5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.

(6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the board pursuant to Sections 19-6-204 and 19-6-205.

(7) "Storage" means the containment of hazardous wastes for a period of more than 90 days.

(8) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to another usable material, or reduced in volume and suitable for ultimate disposal.

Section 62. Section **19-6-203** is amended to read:

19-6-203. Other provisions relating to hazardous waste.

This part [~~shall not~~] may not be construed to supersede any other state or local law relating to hazardous waste, except as otherwise provided in Section 19-6-207.

Section 63. Section **19-6-205** is amended to read:

19-6-205. Siting plan -- Procedure for adoption -- Review -- Effect.

(1) After completion of the guidelines, the board shall prepare and publish a preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the board in accordance with Subsection (2) and shall be based upon the guidelines adopted under Section 19-6-204 and be published within one year after adoption of the guidelines.

(2) (a) After completion of its guidelines, the board shall publish notice of intent to prepare a siting plan. The notice shall invite all interested persons to nominate sites for inclusion in the siting plan. It shall be published at least twice in not less than two newspapers with statewide circulation and shall also be sent to any person, business, or other organization that has notified the board of an interest or involvement in hazardous waste management activities.

(b) Nominations for the location of hazardous waste sites shall be accepted by the

board for a period of 120 days after the date of first publication of notice. Nominations may include a description of the site or sites suggested or may simply suggest a general area. In addition, any nomination may provide data and reasons in support of inclusion of the site nominated.

(c) The board, in cooperation with other state agencies and private sources, shall then prepare an inventory of:

(i) the hazardous wastes generated in the state;

(ii) those likely to be generated in the future;

(iii) those being generated in other states that are likely to be treated, disposed of, or stored in the state;

(iv) the sites within the state currently being used for hazardous waste and those suggested through the nomination process;

(v) the treatment, storage, and disposal processes and management practices that are required to comply with Section 19-6-108; and

(vi) an estimate of the public and private costs for meeting the long-term demand for hazardous waste treatment, disposal, and storage facilities.

(d) (i) After the hazardous waste inventory and cost estimate are complete, the board, with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment, and storage for the next 25 years.

(ii) The board [~~shall not~~] may not exclude any area of the state from consideration in the selection of potential sites but, to the maximum extent possible, shall give preference to sites located in areas already dedicated through zoning or other land use regulations to industrial use or to areas located near industrial uses. However, the board shall give consideration to excluding an area designated for disposal of uranium mill tailings or for disposal of nuclear wastes unless the proposed disposal site is approved by the affected county through its county executive and county legislative body.

(e) The board shall also analyze and identify areas of the state where, due to the

concentration of industrial waste generation processes or to favorable geology or hydrology, the construction and operation of hazardous waste treatment, disposal, and storage facilities appears to be technically, environmentally, and economically feasible.

(3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before adoption, be distributed to all units of local government located near existing or proposed sites.

(b) Notice of the availability of the preliminary siting plan for examination shall be published at least twice in two newspapers, if available, with general circulation in the areas of the state that potentially will be affected by the plan.

(c) The board shall also issue a statewide news release that informs persons where copies of the preliminary siting plan may be inspected or purchased at cost.

(d) After release of the preliminary siting plan, the board shall hold not less than two public hearings in different areas of the state affected by the proposed siting plan to allow local officials and other interested persons to express their views and submit information relevant to the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release of the plan. Within 30 days after completion of the hearings, the board shall prepare and make available for public inspection a summary of public comments.

(4) (a) The board, between 30 and 60 days after publication of the public comments, shall prepare a final siting plan.

(b) The final siting plan shall be widely distributed to members of the public.

(c) The board, at any time between 30 and 60 days after release of the final plan, on its own initiative or that of interested parties, shall hold not less than two public hearings in each area of the state affected by the final plan to allow local officials and other interested persons to express their views.

(d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with modification, or reject the final siting plan.

(5) (a) Any person adversely affected by the board's decision may seek judicial review of the decision by filing a petition for review with the district court for Salt Lake County within 90 days after the board's decision.

(b) Judicial review may be had, however, only on the grounds that the board violated the procedures set forth in this section, that it acted without or in excess of its powers, or that its actions were arbitrary or capricious and not based on substantial evidence.

(6) If the final siting plan is adopted, the board shall cause it to be published.

(7) After publication of the final siting plan, the board shall engage in a continuous monitoring and review process to ensure that the long-range needs of hazardous waste producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An annual review of the adequacy of the plan shall be conducted and published by the board.

(8) (a) If necessary, the board may amend the siting plan to provide additional sites or delete sites which are no longer suitable.

(b) Before any plan amendment adding or deleting a site is adopted, the board, upon not less than 20 days' public notice, shall hold at least one public hearing in the area where the affected site is located.

(9) After adoption of the final plan, an applicant for approval of a plan to construct and operate a hazardous waste treatment, storage, and disposal facility who seeks protection under this part shall select a site contained on the final site plan.

(10) Nothing in this part, however, shall be construed to prohibit the construction and operation of an approved hazardous waste treatment, storage, and disposal facility at a site which is not included within the final site plan, but such a facility is not entitled to the protections afforded under this part.

Section 64. Section **19-6-413** is amended to read:

19-6-413. Tank tightness test -- Actions required after testing.

(1) The owner or operator of any petroleum storage tank registered [~~prior to~~] before July 1, 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test conducted:

(a) on or after September 1, 1989, and [~~prior to~~] before January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or

(b) on or after January 1, 1990, and [~~prior to~~] before July 1, 1991.

(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.

(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the executive secretary at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.

(4) (a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:

(i) correct the problem; and

(ii) submit evidence of the correction to the executive secretary.

(b) When the executive secretary receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the executive secretary shall:

(i) approve or disapprove the correction; and

(ii) notify the owner or operator that the correction has been approved or disapproved.

(5) The executive secretary shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.

(6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

Section 65. Section **19-6-714** is amended to read:

19-6-714. Recycling fee on sale of oil.

(1) On and after October 1, 1993, a recycling fee of $.04 per quart or $.16 per gallon is

imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.

(2) A fee under this section [~~shall not~~] may not be collected on sales of lubricating oil:

(a) shipped outside the state;

(b) purchased in five-gallon or smaller containers and used solely in underground mining operations; or

(c) in bulk containers of 55 gallons or more.

(3) This fee is in addition to all other state, county, or municipal fees and taxes imposed on the sale of lubricating oil.

(4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply to this part.

(5) The commission may make rules to implement and enforce the provisions of this section.

Section 66. Section **19-6-814** is amended to read:

19-6-814. Local health department responsibility.

(1) A local health department that has received an application for partial reimbursement from a recycler shall within 15 calendar days after receiving the application:

(a) review the application for completeness;

(b) conduct an on-site investigation of the recycler's waste tire use if the application is the initial application of the recycler; and

(c) submit the recycler's application for partial reimbursement together with a brief written report of the results of the investigation and the dollar amount approved for payment to the Division of Finance.

(2) If the local health department approves a dollar amount for partial reimbursement which is less than the amount requested by the recycler, the local health department [~~must~~] shall submit its written report of the investigation and recommendation to the recycler at least five days prior to submitting the report and recommendation to the Division of Finance.

Section 67. Section **19-9-105** is amended to read:

19-9-105. Powers of authority.

The authority is a body corporate and politic that may:

(1) sue and be sued in its own name;

(2) have a seal and alter the seal at will;

(3) borrow money and issue obligations, including refunding obligations, and provide for the rights of holders of those obligations;

(4) establish hazardous waste treatment, disposal, or storage surcharge schedules for facilities operated by, or under authority of, the authority, and require all private facility operators who contract with the authority to collect fees for all hazardous waste received for treatment, disposal, or storage by those private facilities;

(5) promulgate rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the exercise of its powers and fulfillment of its purposes;

(6) enter into contracts and leases and execute all instruments necessary, convenient, or desirable;

(7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in property that is necessary, convenient, or desirable to carry out the purposes of this chapter, and sell, lease, transfer, and dispose of any property or interest in property at any time required in the exercise of its power, including[~~, but not limited to,~~] the sale, transfer, or disposal of any materials, substances, or sources or forms of energy derived from any activity engaged in by the authority;

(8) contract with experts, advisers, consultants, and agents for needed services;

(9) appoint officers and employees required for the performance of its duties, and fix and determine their qualifications and duties;

(10) make, or contract for, plans, surveys, and studies necessary, convenient, or desirable to effectuate its purposes and powers and prepare any recommendations with respect to those plans, surveys, or studies;

(11) receive and accept aid or contributions from any source, including the United States or the state, in the form of money, property, labor, or other things of value to be held,

used, and applied to carry out the purposes of this chapter, subject to the conditions imposed upon that aid or contributions consistent with this chapter;

(12) enter into agreements with any department, agency, or instrumentality of the United States or this state, or any financial institution, or contractor for the purpose of leasing and operating any facility;

(13) consent to the modification of any obligation with the holder of that obligation, to the extent permitted by the obligation, relating to rates of interest or to the time and payment of any installment of principal or interest, or to the modification of any other contract, mortgage, mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;

(14) pledge revenues from any hazardous waste treatment, disposal, and storage facility to secure payment of any obligations relating to that facility, including interest on, and redemption of, those obligations;

(15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge agreements, assignments, security agreements, and financing statements that encumber property acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the sale of such obligations;

(16) exercise the power of eminent domain;

(17) do all other things necessary to comply with the requirements of 42 U.S.C. Sections 6901-6986, the Resource Conservation and Recovery Act of 1976, and this part;

(18) contract for the construction, operation, and maintenance of hazardous waste treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous waste, subject to approval by the board; and

(19) exercise any other powers or duties necessary or appropriate to carry out and effectuate this chapter.

Section 68. Section **19-9-109** is amended to read:

19-9-109. Security for obligations -- Provisions of security instruments.

(1) The principal and interest on any obligation issued pursuant to this chapter shall be

secured by:

(a) a pledge and assignment of the proceeds earned by the facility built and acquired with the proceeds of the obligations;

(b) a mortgage or trust deed on the facility built and acquired with the proceeds from the obligations; and

(c) such other security on the facility as is deemed most advantageous by the authority.

(2) Obligations authorized for issuance under this chapter and any mortgage or other security given to secure such obligations may contain any provisions customarily contained in security instruments, including[~~, but not limited to~~]:

(a) the fixing and collection of fees from the facility;

(b) the maintenance of insurance on the facility;

(c) the creation and maintenance of special funds to receive revenues earned by the facility; and

(d) the rights and remedies available to obligation holders in the event of default.

(3) All mortgages, trust deeds, security agreements, or trust indentures on a facility shall provide, in the event of foreclosure, that no deficiency judgment may be entered against the authority, the state, or any of the state's political subdivisions.

(4) Any mortgage or other security instrument securing such obligations may provide that in the event of a default in the payment of principal or interest or in the performance of any agreement, that payment or performance may be enforced by the appointment of a receiver with power to charge and collect fees and to apply the revenues from the facility in accordance with the provisions of the security instrument.

(5) Any mortgage or other security instrument made pursuant to this chapter may also provide that in the event of default in payment or breach of a condition, that the mortgage may be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under the mortgage or the holder of any obligation secured by such mortgage may, if the highest bidder, purchase the security at foreclosure sale.

Section 69. Section **19-10-104** is amended to read:

19-10-104. Requirements for creation of institutional control.

An environmental institutional control shall:

(1) be in writing and shall be recorded by the owner of the real property in the county recorder's office in the county where the real property is located;

(2) contain a legal description of the area of the real property that is subject to the institutional control;

(3) include a statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect the public health, safety, or welfare, or the environment;

(4) include a statement that the institutional control runs with the land and is binding on all successors in interest unless or until the institutional control is removed as provided in Section 19-10-105;

(5) include a statement acknowledging the department's right of access to the property at all reasonable times to verify that the institutional controls are being maintained;

(6) include a statement explaining how the institutional control can be modified or terminated and stating that if any person desires to cancel or modify the institutional control in the future, the person [~~must~~] shall obtain prior written approval from the executive director pursuant to this chapter;

(7) include a notarized signature of the executive director indicating approval of the environmental institutional control; and

(8) include the notarized signature of the property owner indicating approval of the environmental institutional control.

Section 70. Section **20A-1-401** is amended to read:

20A-1-401. Interpretation of election laws -- Computation of time.

(1) Courts and election officers shall construe the provisions of [~~Title 20A, Election Code,~~] this title liberally to carry out the intent of this title.

(2) Except as provided under Subsection (3), Saturdays, Sundays, and holidays shall be included in all computations of days made under the provisions of [~~Title 20A, Election Code~~]

this title.

(3) Unless otherwise specifically provided for under this title [~~20A~~]:

(a) when computing any number of days before or after a specified date or event under this [~~Title 20A~~] title, the specified date or day of the event [~~shall not be~~] is not included in the count; and

(b) (i) if the commencement date of a time period preceding a specified date or event falls on a Saturday, Sunday, or legal holiday, the following business day shall be used;

(ii) if the last day of a time period following a specified date or event falls on a Saturday, Sunday, or legal holiday, the time period shall be extended to the following business day; and

(iii) if a deadline that falls before or after a specified date or event falls on a Saturday, Sunday, or legal holiday, the deadline shall be considered to fall on the following business day.

Section 71. Section **20A-1-508** is amended to read:

20A-1-508. Midterm vacancies in county elected offices.

(1) As used in this section:

(a) "County offices" includes the county executive, members of the county legislative body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county recorder, the county surveyor, and the county assessor.

(b) "County offices" does not mean the offices of president and vice president of the United States, United States senators and representatives, members of the Utah Legislature, state constitutional officers, county attorneys, district attorneys, and judges.

(2) (a) Until a replacement is selected as provided in this section and has qualified, the county legislative body shall appoint an interim replacement to fill the vacant office by following the procedures and requirements of this Subsection (2).

(b) (i) To appoint an interim replacement, the county legislative body shall give notice of the vacancy to the county central committee of the same political party of the prior office holder and invite that committee to submit the names of three nominees to fill the vacancy.

(ii) That county central committee shall, within 30 days, submit the names of three

nominees for the interim replacement to the county legislative body.

(iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint an interim replacement to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a replacement within the statutory time period; and

(B) contains the list of nominees submitted by the party central committee.

(ii) The governor shall appoint an interim replacement from that list of nominees to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed as interim replacement under this Subsection (2) shall hold office until their successor is elected and has qualified.

(3) (a) The requirements of this Subsection (3) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the election at which the person was elected but before April 10 of the next even-numbered year.

(b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk shall notify the public and each registered political party that the vacancy exists.

(ii) All persons intending to become candidates for the vacant office shall:

(A) file a declaration of candidacy according to the procedures and requirements of Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

(B) if nominated as a party candidate or qualified as an independent or write-in candidate under Chapter 8, Political Party Formation and Procedures, run in the regular general election.

(4) (a) The requirements of this Subsection (4) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50 days before the regular primary election.

(b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk shall notify the public and each registered political party that:

(A) the vacancy exists; and

(B) identifies the date and time by which a person interested in becoming a candidate [~~must~~] shall file a declaration of candidacy.

(ii) All persons intending to become candidates for the vacant offices shall, within five days after the date that the notice is made, ending at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office as required by Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy.

(iii) The county central committee of each party shall:

(A) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(B) certify the name of the candidate or candidates to the county clerk at least 35 days before the regular primary election.

(5) (a) The requirements of this Subsection (5) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of two years or more; and

(ii) when 50 days or less remain before the regular primary election but more than 50 days remain before the regular general election.

(b) When the conditions established in Subsection (5)(a) are met, the county central committees of each political party registered under this title that wishes to submit a candidate for the office shall summarily certify the name of one candidate to the county clerk for placement on the regular general election ballot.

(6) (a) The requirements of this Subsection (6) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of less than two years; or

(ii) if the vacant office has an unexpired term of two years or more but 50 days or less remain before the next regular general election.

(b) (i) When the conditions established in Subsection (6)(a) are met, the county legislative body shall give notice of the vacancy to the county central committee of the same political party as the prior office holder and invite that committee to submit the names of three nominees to fill the vacancy.

(ii) That county central committee shall, within 30 days, submit the names of three nominees to fill the vacancy to the county legislative body.

(iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint a person to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a person to fill the vacancy within the statutory time period; and

(B) contains the list of nominees submitted by the party central committee.

(ii) The governor shall appoint a person to fill the vacancy from that list of nominees to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed to fill the vacancy under this Subsection (6) shall hold office until their successor is elected and has qualified.

(7) Except as otherwise provided by law, the county legislative body may appoint replacements to fill all vacancies that occur in those offices filled by appointment of the county legislative body.

(8) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the same time limits.

(9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a county office shall serve for the remainder of the unexpired term of the person who created the vacancy and until a successor is elected and qualified.

(b) Nothing in this section may be construed to contradict or alter the provisions of

Section 17-16-6.

Section 72. Section **20A-1-509.1** is amended to read:

20A-1-509.1. Procedure for filling midterm vacancy in county or district with 15 or more attorneys.

(1) When a vacancy occurs in the office of county or district attorney in a county or district having 15 or more attorneys who are licensed active members in good standing with the Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.

(2) (a) The requirements of this Subsection (2) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs before the third Friday in March of the even-numbered year.

(b) When the conditions established in Subsection (2)(a) are met, the county clerk shall notify the public and each registered political party that the vacancy exists.

(c) All persons intending to become candidates for the vacant office shall:

(i) file a declaration of candidacy according to the procedures and requirements of [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy;

(ii) if nominated as a party candidate or qualified as an independent or write-in candidate under [~~Title 20A,~~] Chapter 9, Candidate Qualifications and Nominating Procedures, run in the regular general election; and

(iii) if elected, complete the unexpired term of the person who created the vacancy.

(d) If the vacancy occurs after the second Friday in March and before the third Friday in March, the time for filing a declaration of candidacy under Section 20A-9-202 shall be extended until seven days after the county clerk gives notice under Subsection (2)(b), but no later than the fourth Friday in March.

(3) (a) The requirements of this Subsection (3) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the third Friday in March of the even-numbered year but

more than 50 days before the regular primary election.

(b) When the conditions established in Subsection (3)(a) are met, the county clerk shall:

(i) notify the public and each registered political party that the vacancy exists; and

(ii) identify the date and time by which a person interested in becoming a candidate [~~must~~] shall file a declaration of candidacy.

(c) All persons intending to become candidates for the vacant office shall:

(i) within five days after the date that the notice is made, ending at at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office as required by [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and [~~Nominating Procedures~~] Declarations of Candidacy; and

(ii) if elected, complete the unexpired term of the person who created the vacancy.

(d) The county central committee of each party shall:

(i) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(ii) certify the name of the candidate or candidates to the county clerk at least 35 days before the regular primary election.

(4) (a) The requirements of this Subsection (4) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of two years or more; and

(ii) 50 days or less remain before the regular primary election but more than 50 days remain before the regular general election.

(b) When the conditions established in Subsection (4)(a) are met, the county central committees of each registered political party that wish to submit a candidate for the office shall summarily certify the name of one candidate to the county clerk for placement on the regular general election ballot.

(c) The candidate elected shall complete the unexpired term of the person who created the vacancy.

(5) (a) The requirements of this Subsection (5) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of less than two years; or

(ii) the vacant office has an unexpired term of two years or more but 50 days or less remain before the next regular general election.

(b) When the conditions established in Subsection (5)(a) are met, the county legislative body shall give notice of the vacancy to the county central committee of the same political party of the prior officeholder and invite that committee to submit the names of three nominees to fill the vacancy.

(c) That county central committee shall, within 30 days of receiving notice from the county legislative body, submit to the county legislative body the names of three nominees to fill the vacancy.

(d) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(e) If the county legislative body fails to appoint a person to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(i) informs the governor that the county legislative body has failed to appoint a person to fill the vacancy within the statutory time period; and

(ii) contains the list of nominees submitted by the party central committee.

(f) The governor shall appoint a person to fill the vacancy from that list of nominees within 30 days after receipt of the letter.

(g) A person appointed to fill the vacancy under Subsection (5) shall complete the unexpired term of the person who created the vacancy.

(6) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the required time limits.

Section 73. Section **20A-1-703** is amended to read:

20A-1-703. Proceedings by registered voter.

(1) Any registered voter who has information that any provisions of this title have been

violated by any candidate for whom the registered voter had the right to vote, by any personal campaign committee of that candidate, by any member of that committee, or by any election official, may file a verified petition with the lieutenant governor.

(2) (a) The lieutenant governor shall gather information and determine if a special investigation is necessary.

(b) If the lieutenant governor determines that a special investigation is necessary, the lieutenant governor shall refer the information to the attorney general, who shall:

(i) bring a special proceeding to investigate and determine whether or not there has been a violation; and

(ii) appoint special counsel to conduct that proceeding on behalf of the state.

(3) If it appears from the petition or otherwise that sufficient evidence is obtainable to show that there is probable cause to believe that a violation has occurred, the attorney general shall:

(a) grant leave to bring the proceeding; and

(b) appoint special counsel to conduct the proceeding.

(4) (a) If leave is granted, the registered voter may, by a special proceeding brought in the district court in the name of the state upon the relation of the registered voter, investigate and determine whether or not the candidate, candidate's personal campaign committee, any member of the candidate's personal campaign committee, or any election officer has violated any provision of this title.

(b) (i) In the proceeding, the complaint shall:

(A) be served with the summons; and

(B) set forth the name of the person or persons who have allegedly violated this title and the grounds of those violations in detail.

(ii) The complaint may not be amended except by leave of the court.

(iii) The summons and complaint in the proceeding shall be filed with the court no later than five days after they are served.

(c) (i) The answer to the complaint shall be served and filed within 10 days after the

service of the summons and complaint.

(ii) Any allegation of new matters in the answer shall be considered controverted by the adverse party without reply, and the proceeding shall be considered at issue and stand ready for trial upon five days' notice of trial.

(d) (i) All proceedings initiated under this section have precedence over any other civil actions.

(ii) The court shall always be considered open for the trial of the issues raised in this proceeding.

(iii) The proceeding shall be tried and determined as a civil action without a jury, with the court determining all issues of fact and issues of law.

(iv) If more than one proceeding is pending or the election of more than one person is investigated and contested, the court may:

(A) order the proceedings consolidated and heard together; and

(B) equitably apportion costs and disbursements.

(e) (i) Either party may request a change of venue as provided by law in civil actions, but application for a change of venue [~~must~~] shall be made within five days after service of summons and complaint.

(ii) The judge shall decide the request for a change of venue and issue any necessary orders within three days after the application is made.

(iii) If a party fails to request a change of venue within five days of service, [~~he~~] that party has waived [~~his~~] that party's right to a change of venue.

(f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to recover his taxable costs and disbursements against the person whose right to the office is contested.

(ii) The judge may not award costs to the defendant unless it appears that the proceeding was brought in bad faith.

(iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide whether or not to award costs and disbursements.

(5) Nothing in this section may be construed to prohibit any other civil or criminal actions or remedies against alleged violators.

(6) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

Section 74. Section **20A-2-102.5** is amended to read:

20A-2-102.5. Voter registration deadline.

(1) Except as provided in Section 20A-2-201 and in [~~Title 20A,~~] Chapter 3, Part 4, Voting by Members of the Military and by Other Persons Living or Serving Abroad, a person who fails to submit a correctly completed voter registration form on or before the voter registration deadline [~~shall not~~] may not be permitted to vote in the election.

(2) The voter registration deadline shall be the date that is 30 calendar days before the date of the election.

Section 75. Section **20A-2-105** is amended to read:

20A-2-105. Determining residency.

(1) Except as provided in Subsection (4), election officials and judges shall apply the standards and requirements of this section when determining whether or not a person is a resident for purposes of interpreting this title or the Utah Constitution.

(2) A "resident" is a person who resides within a specific voting precinct in Utah as provided in this section.

(3) (a) A person resides in Utah if:

(i) the person's principal place of residence is within Utah; and

(ii) the person has a present intention to continue residency within Utah permanently or indefinitely.

(b) A person resides within a particular voting precinct if, as of the date of registering to vote, the person has the person's principal place of residence in that voting precinct.

(4) (a) The principal place of residence of any person shall be determined by applying the provisions of this Subsection (4).

(b) A person's "principal place of residence" is that place in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(c) A person has not gained or lost a residence solely because the person is present in Utah or present in a voting precinct or absent from Utah or absent from the person's voting precinct because the person is:

(i) employed in the service of the United States or of Utah;

(ii) a student at any institution of learning;

(iii) incarcerated in prison or jail; or

(iv) residing upon any Indian or military reservation.

(d) (i) A member of the armed forces of the United States is not a resident of Utah merely because that member is stationed at any military facility within Utah.

(ii) In order to be a resident of Utah, that member [~~must~~] shall meet the other requirements of this section.

(e) (i) Except as provided in Subsection (4)(e)(ii), a person has not lost the person's residence if that person leaves the person's home to go into a foreign country or into another state or into another voting precinct within Utah for temporary purposes with the intention of returning.

(ii) If that person has voted in that other state or voting precinct, the person is a resident of that other state or voting precinct.

(f) A person is not a resident of any county or voting precinct if that person comes for temporary purposes and does not intend to make that county or voting precinct the person's home.

(g) If a person removes to another state with the intention of making it the person's principal place of residence, the person loses the person's residence in Utah.

(h) If a person moves to another state with the intent of remaining there for an indefinite time as a place of permanent residence, the person loses the person's residence in Utah, even though the person intends to return at some future time.

(i) (i) Except as provided in Subsection (4)(i)(ii), the place where a person's family resides is presumed to be the person's place of residence.

(ii) A person may rebut the presumption established in Subsection (4)(i)(i) by proving the person's intent to remain at a place other than where the person's family resides.

(j) (i) A person has changed [~~his~~] the person's residence if:

(A) the person has acted affirmatively to [~~remove himself~~] move from one geographic location; and

(B) the person has an intent to remain in another place.

(ii) There can only be one residence.

(iii) A residence cannot be lost until another is gained.

(5) In computing the period of residence, a person shall:

(a) include the day on which the person's residence begins; and

(b) exclude the day of the next election.

(6) (a) There is a presumption that a person is a resident of Utah and of a voting precinct and intends to remain in Utah permanently or indefinitely if the person makes an oath or affirmation upon a registration application form that the person's residence address and place of residence is within a specific voting precinct in Utah.

(b) The election officers and election officials shall allow that person to register and vote unless, upon a challenge by a registrar or some other person, it is shown by law or by clear and convincing evidence that:

(i) the person does not intend to remain permanently or indefinitely in Utah; or

(ii) the person is incarcerated in prison or jail.

(7) (a) The rules set forth in this section for determining place of residence for voting purposes do not apply to a person incarcerated in prison or jail.

(b) For voting registration purposes, a person incarcerated in prison or jail is considered to reside in the voting precinct in which the person's place of residence was located before incarceration.

(8) If a person's principal place of residence is a residential parcel of one acre in size or

smaller that is divided by the boundary line between two or more counties, that person shall be considered a resident of the county in which a majority of the residential parcel lies.

Section 76. Section **20A-2-306** is amended to read:

20A-2-306. Removing names from the official register -- Determining and confirming change of residence.

(1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:

(a) confirms in writing that the voter has changed residence to a place outside the county; or

(b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and

(ii) has failed to respond to the notice required by Subsection (3).

(2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:

(i) change the official register to show the voter's new address; and

(ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed:

"VOTER REGISTRATION NOTICE

We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

_____

Street City County State Zip

If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or

- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

_____

Signature of Voter"

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.

(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:

(i) the voter requests, in writing, that [~~his~~] the voter's name be removed; or

(ii) the voter has died.

(c) (i) After a county clerk mails a notice as required in this section, the clerk may list that voter as inactive.

(ii) An inactive voter [~~must~~] shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.

(iii) A county is not required to send routine mailings to inactive voters and is not required to count inactive voters when dividing precincts and preparing supplies.

Section 77. Section **20A-4-201** is amended to read:

20A-4-201. Delivery of election returns.

(1) One poll worker shall deliver the ballot box, the lock, and the key to:

(a) the election officer; or

(b) the location directed by the election officer.

(2) (a) Before they adjourn, the poll workers shall choose one or more of their number to deliver the election returns to the election officer.

(b) That poll worker or those poll workers shall:

(i) deliver the unopened envelopes or pouches to the election officer or counting center immediately but no later than 24 hours after the polls close; or

(ii) if the polling place is 15 miles or more from the county seat, mail the election returns to the election officer by registered mail from the post office most convenient to the polling place within 24 hours after the polls close.

(3) The election officer shall pay each poll worker reasonable compensation for travel that is necessary to deliver the election returns and to return to the polling place.

(4) The requirements of this section [~~shall not~~] do not prohibit transmission of the unofficial vote count to the counting center via electronic means, provided that reasonable security measures are taken to preserve the integrity and privacy of the transmission.

Section 78. Section **20A-5-403** is amended to read:

20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections -- Arrangements.

(1) Each election officer shall:

(a) designate polling places for each voting precinct in the jurisdiction; and

(b) obtain the approval of the county or municipal legislative body or local district governing board for those polling places.

(2) (a) For each polling place, the election officer shall provide:

(i) an American flag;

(ii) a sufficient number of voting booths or compartments;

(iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot sheets, write-in ballots, and any other records and supplies necessary to enable a voter to vote;

(iv) the constitutional amendment cards required by Part 1, Election Notices and Instructions;

(v) voter information pamphlets required by [~~Title 20A,~~] Chapter 7, Part 7, Voter Information Pamphlet;

(vi) the instruction cards required by Section 20A-5-102; and

(vii) a sign, to be prominently displayed in the polling place, indicating that valid voter identification is required for every voter before the voter may vote and listing the forms of identification that constitute valid voter identification.

(b) Each election officer shall ensure that:

(i) each voting booth is at a convenient height for writing, and is arranged so that the voter can prepare [~~his~~] the voter's ballot screened from observation;

(ii) there are a sufficient number of voting booths or voting devices to accommodate the voters at that polling place; and

(iii) there is at least one voting booth or voting device that is configured to accommodate persons with disabilities.

(c) Each county clerk shall provide a ballot box for each polling place that is large enough to properly receive and hold the ballots to be cast.

(3) (a) All polling places shall be physically inspected by each county clerk to ensure access by a person with a disability.

(b) Any issues concerning inaccessibility to polling places by a person with a disability discovered during the inspections referred to in Subsection (3)(a) or reported to the county clerk shall be:

(i) forwarded to the Office of the Lieutenant Governor; and

(ii) within six months of the time of the complaint, the issue of inaccessibility shall be either:

(A) remedied at the particular location by the county clerk;

(B) the county clerk shall designate an alternative accessible location for the particular precinct; or

(C) if no practical solution can be identified, file with the Office of the Lieutenant Governor a written explanation identifying the reasons compliance cannot reasonably be met.

(4) (a) The municipality in which the election is held shall pay the cost of conducting each municipal election, including the cost of printing and supplies.

(b) (i) Costs assessed by a county clerk to a municipality under this section [~~shall not~~] may not exceed the actual costs incurred by the county clerk.

(ii) The actual costs shall include:

(A) costs of or rental fees associated with the use of election equipment and supplies; and

(B) reasonable and necessary administrative costs.

(5) The county clerk shall make detailed entries of all proceedings had under this chapter.

Section 79. Section **20A-6-302** is amended to read:

20A-6-302. Paper ballots -- Placement of candidates' names.

(1) Each election officer shall ensure, for paper ballots in regular general elections, that:

(a) except for candidates for state school board and local school boards:

(i) each candidate is listed by party; and

(ii) candidates' surnames are listed in alphabetical order on the ballots when two or more candidates' names are required to be listed on a ticket under the title of an office;

(b) the names of candidates for the State Board of Education are placed on the ballot as certified by the lieutenant governor under Section 20A-14-105;

(c) if candidates for membership on a local board of education were selected in a regular primary election, the name of the candidate who received the most votes in the regular primary election is listed first on the ballot; and

(d) if candidates for membership on a local board of education were not selected in the

regular primary election, the names of the candidates are listed on the ballot in the order determined by a lottery conducted by the county clerk.

(2) (a) The election officer may not allow the name of a candidate who dies or withdraws before election day to be printed upon the ballots.

(b) If the ballots have already been printed, the election officer:

(i) shall, if possible, cancel the name of the dead or withdrawn candidate by drawing a line through the candidate's name before the ballots are delivered to voters; and

(ii) may not count any votes for that dead or withdrawn candidate.

(3) (a) When there is only one candidate for county attorney at the regular general election in counties that have three or fewer registered voters of the county who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of county attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of county attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may [~~he~~] the candidate continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for county attorney is printed on the ballot under authority of this Subsection (3), the county clerk may not count any write-in votes received for the office of county attorney.

(e) If no qualified person files for the office of county attorney or if the candidate is not elected by the voters, the county legislative body shall appoint the county attorney as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (3)(f), be placed on the ballot under Subsection (3)(a) has been elected on a ballot under Subsection (3)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking

election, Subsection (3)(a) [~~shall not~~] does not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (3)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

(4) (a) When there is only one candidate for district attorney at the regular general election in a prosecution district that has three or fewer registered voters of the district who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of district attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of district attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may [~~he~~] the candidate continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for district attorney is printed on the ballot under authority of this Subsection (4), the county clerk may not count any write-in votes received for the office of district attorney.

(e) If no qualified person files for the office of district attorney, or if the only candidate is not elected by the voters under this subsection, the county legislative body shall appoint a new district attorney for a four-year term as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (4)(f), be placed on the ballot under Subsection (4)(a) has been elected on a ballot under Subsection (4)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking

election, Subsection (4)(a) [~~shall not~~] does not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (4)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

Section 80. Section **20A-7-202** is amended to read:

20A-7-202. Statewide initiative process -- Application procedures -- Time to gather signatures -- Grounds for rejection.

(1) Persons wishing to circulate an initiative petition shall file an application with the lieutenant governor.

(2) The application shall contain:

(a) the name and residence address of at least five sponsors of the initiative petition;

(b) a statement indicating that each of the sponsors:

(i) is a resident of Utah; and

(ii) has voted in a regular general election in Utah within the last three years;

(c) the signature of each of the sponsors, attested to by a notary public;

(d) a copy of the proposed law that includes:

(i) the title of the proposed law, which clearly expresses the subject of the law; and

(ii) the text of the proposed law; and

(e) a statement indicating whether or not persons gathering signatures for the petition may be paid for doing so.

(3) The application and its contents are public when filed with the lieutenant governor.

(4) (a) The sponsors shall qualify the petition for the regular general election ballot no later than one year after the application is filed.

(b) If the sponsors fail to qualify the petition for that ballot, the sponsors [~~must~~] shall:

(i) submit a new application;

(ii) obtain new signature sheets; and

(iii) collect signatures again.

(5) The lieutenant governor shall reject the application and not issue circulation sheets if:

(a) the law proposed by the initiative is patently unconstitutional;

(b) the law proposed by the initiative is nonsensical;

(c) the proposed law could not become law if passed;

(d) the law contains more than one subject;

(e) the subject of the law is not clearly expressed in the law's title; or

(f) the law proposed by the initiative is identical or substantially similar to a law proposed by an initiative that was submitted to the county clerks and lieutenant governor for certification and evaluation within two years preceding the date on which the application for this initiative was filed.

Section 81. Section **20A-7-204.1** is amended to read:

20A-7-204.1. Public hearings to be held before initiative petitions are circulated.

(1) (a) After issuance of the initial fiscal impact estimate by the Governor's Office of Planning and Budget and before circulating initiative petitions for signature statewide, sponsors of the initiative petition shall hold at least seven public hearings throughout Utah as follows:

(i) one in the Bear River region -- Box Elder, Cache, or Rich County;

(ii) one in the Southwest region -- Beaver, Garfield, Iron, Kane, or Washington County;

(iii) one in the Mountain region -- Summit, Utah, or Wasatch County;

(iv) one in the Central region -- Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;

(v) one in the Southeast region -- Carbon, Emery, Grand, or San Juan County;

(vi) one in the Uintah Basin region -- Daggett, Duchesne, or Uintah County; and

(vii) one in the Wasatch Front region -- Davis, Morgan, Salt Lake, Tooele, or Weber

County.

(b) Of the seven meetings, at least two of the meetings [~~must~~] shall be held in a first or second class county, but not in the same county.

(2) At least three calendar days before the date of the public hearing, the sponsors shall:

(a) provide written notice of the public hearing to:

(i) the lieutenant governor for posting on the state's website; and

(ii) each state senator, state representative, and county commission or county council member who is elected in whole or in part from the region where the public hearing will be held; and

(b) publish written notice of the public hearing detailing its time, date, and location:

(i) in at least one newspaper of general circulation in each county in the region where the public hearing will be held; and

(ii) on the Utah Public Notice Website created in Section 63F-1-701.

(3) (a) During the public hearing, the sponsors shall either:

(i) video tape or audio tape the public hearing and, when the hearing is complete, deposit the complete audio or video tape of the meeting with the lieutenant governor; or

(ii) take comprehensive minutes of the public hearing, detailing the names and titles of each speaker and summarizing each speaker's comments.

(b) The lieutenant governor shall make copies of the tapes or minutes available to the public.

Section 82. Section **20A-7-702 (Superseded 01/01/12)** is amended to read:

20A-7-702 (Superseded 01/01/12). Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than 10 point, except that the text of any

measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and

(vii) for each referendum qualified for the ballot, a complete copy of the text of the law

being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;

(h) a description provided by the Judicial Council of the selection and retention process for judges, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria and minimum standards of judicial performance evaluation;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to by the judge in accordance with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received; and

(E) a statement identifying whether or not the judge was certified by the Judicial Council;

(vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic format, the responses for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in 1% increments; and

(B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the

survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;

(i) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information, including information on how to obtain an absentee ballot;

(k) a list of all county clerks' offices and phone numbers; and

(l) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)

(signed) _____

Lieutenant Governor"

[~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the date voting commences:~~]

(3) No earlier than 40 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:

(a) (i) distribute one copy of the voter information pamphlet to each household within the state; or

(ii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 83. Section **20A-7-702 (Effective 01/01/12)** is amended to read:

20A-7-702 (Effective 01/01/12). Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than 10 point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and

(vii) for each referendum qualified for the ballot, a complete copy of the text of the law being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;

(h) a description provided by the Judicial Performance Evaluation Commission of the selection and retention process for judges, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria of the judicial performance evaluation and the minimum performance standards;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) a list of the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to by the judge in accordance with Title 78A,

Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received;

(E) a statement identifying whether or not the Judicial Performance Evaluation Commission recommends the judge be retained or declines to make a recommendation; and

(F) any statement provided by a judge who is not recommended for retention by the Judicial Performance Evaluation Commission under Section 78A-12-203;

(vii) for each judge, in a bar graph, the average of responses to each survey category, displayed with an identification of the minimum acceptable score as set by Section 78A-12-205 and the average score of all judges of the same court level; and

(viii) [~~an Internet~~] a website address that contains the Judicial Performance Evaluation Commission's report on the judge's performance evaluation;

(i) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information, including information on how to obtain an absentee ballot;

(k) a list of all county clerks' offices and phone numbers; and

(l) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)

(signed) _____

Lieutenant Governor"

[~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the date voting commences:~~]

(3) No earlier than 40 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:

(a) (i) distribute one copy of the voter information pamphlet to each household within the state; or

(ii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 84. Section **20A-7-706** is amended to read:

20A-7-706. Copies of arguments to be sent to opposing authors -- Rebuttal arguments.

(1) When the lieutenant governor has received the arguments for and against a measure to be submitted to the voters, the lieutenant governor shall immediately send copies of the arguments in favor of the measure to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor.

(2) The authors may prepare and submit rebuttal arguments not exceeding 250 words.

(3) (a) The rebuttal arguments [~~must~~] shall be filed with the lieutenant governor:

(i) for constitutional amendments and referendum petitions, not later than the day that falls 120 days before the date of the election; and

(ii) for initiatives, not later than August 30.

(b) Except as provided in Subsection (3)(d), the authors may not amend or change the rebuttal arguments after they are submitted to the lieutenant governor.

(c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the arguments in any way.

(d) The lieutenant governor and the authors of a rebuttal argument may jointly modify a rebuttal argument after it is submitted if:

(i) they jointly agree that changes to the rebuttal argument must be made to correct spelling or grammatical errors; and

(ii) the rebuttal argument has not yet been submitted for typesetting.

(4) The lieutenant governor shall ensure that:

(a) rebuttal arguments are printed in the same manner as the direct arguments; and

(b) each rebuttal argument follows immediately after the direct argument which it seeks to rebut.

Section 85. Section **20A-9-403** is amended to read:

20A-9-403. Regular primary elections.

(1) (a) The fourth Tuesday of June of each even-numbered year is designated as regular primary election day.

(b) Each registered political party that chooses to use the primary election process to nominate some or all of its candidates shall comply with the requirements of this section.

(2) (a) As a condition for using the state's election system, each registered political party that wishes to participate in the primary election shall:

(i) declare their intent to participate in the primary election;

(ii) identify one or more registered political parties whose members may vote for the registered political party's candidates and whether or not persons identified as unaffiliated with a political party may vote for the registered political party's candidates; and

(iii) certify that information to the lieutenant governor no later than 5 p.m. on March 1 of each even-numbered year.

(b) As a condition for using the state's election system, each registered political party

that wishes to participate in the primary election shall:

(i) certify the name and office of all of the registered political party's candidates to the lieutenant governor no later than 5 p.m. on May 13 of each even-numbered year; and

(ii) certify the name and office of each of its county candidates to the county clerks by 5 p.m. on May 13 of each even-numbered year.

(c) By 5 p.m. on May 16 of each even-numbered year, the lieutenant governor shall send the county clerks a certified list of the names of all statewide or multicounty candidates that [~~must~~] shall be printed on the primary ballot.

(d) (i) Except as provided in Subsection (2)(d)(ii), if a registered political party does not wish to participate in the primary election, it shall submit the names of its county candidates to the county clerks and the names of all of its candidates to the lieutenant governor by 5 p.m. on May 30 of each even-numbered year.

(ii) A registered political party's candidates for President and Vice-President of the United States shall be certified to the lieutenant governor as provided in Subsection 20A-9-202(4).

(e) Each political party shall certify the names of its presidential and vice-presidential candidates and presidential electors to the lieutenant governor's office no later than September 8 of each presidential election year.

(3) The county clerk shall:

(a) review the declarations of candidacy filed by candidates for local boards of education to determine if more than two candidates have filed for the same seat;

(b) place the names of all candidates who have filed a declaration of candidacy for a local board of education seat on the nonpartisan section of the ballot if more than two candidates have filed for the same seat; and

(c) conduct a lottery to determine the order of the candidates' names on the ballot.

(4) After the county clerk receives the certified list from a registered political party, the county clerk shall post or publish a primary election notice in substantially the following form:

"Notice is given that a primary election will be held Tuesday, June ____,

_____(year), to nominate party candidates for the parties and nonpartisan offices listed on the primary ballot. The polling place for voting precinct ____ is ____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk".

(5) (a) Candidates receiving the highest number of votes cast for each office at the regular primary election are nominated by their party or nonpartisan group for that office.

(b) If two or more candidates are to be elected to the office at the regular general election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the regular primary election are the nominees of their party for those positions.

(6) (a) When a tie vote occurs in any primary election for any national, state, or other office that represents more than one county, the governor, lieutenant governor, and attorney general shall, at a public meeting called by the governor and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the governor determines.

(b) When a tie vote occurs in any primary election for any county office, the district court judges of the district in which the county is located shall, at a public meeting called by the judges and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the judges determine.

(7) The expense of providing all ballots, blanks, or other supplies to be used at any primary election provided for by this section, and all expenses necessarily incurred in the preparation for or the conduct of that primary election shall be paid out of the treasury of the county or state, in the same manner as for the regular general elections.

Section 86. Section **20A-11-401** is amended to read:

20A-11-401. Officeholder financial reporting requirements -- Year-end summary report.

(1) (a) Each officeholder shall file a summary report by January 10 of each year.

(b) An officeholder that is required to file a summary report both as an officeholder and as a candidate for office under the requirements of this chapter may file a single summary report as a candidate and an officeholder, provided that the combined report meets the

requirements of:

(i) this section; and

(ii) the section that provides the requirements for the summary report [~~that must be~~] filed by the officeholder in the officeholder's capacity of a candidate for office.

(2) (a) Each summary report shall include the following information as of December 31 of the previous year:

(i) the net balance of the last summary report, if any;

(ii) a single figure equal to the total amount of receipts received since the last summary report, if any;

(iii) a single figure equal to the total amount of expenditures made since the last summary report, if any;

(iv) a detailed listing of each contribution and public service assistance received since the last summary report;

(v) for each nonmonetary contribution:

(A) the fair market value of the contribution with that information provided by the contributor; and

(B) a specific description of the contribution;

(vi) a detailed listing of each expenditure made since the last summary report;

(vii) for each nonmonetary expenditure, the fair market value of the expenditure; and

(viii) a net balance for the year consisting of the net balance from the last summary report plus all receipts minus all expenditures.

(b) (i) For all individual contributions or public service assistance of $50 or less, a single aggregate figure may be reported without separate detailed listings.

(ii) Two or more contributions from the same source that have an aggregate total of more than $50 may not be reported in the aggregate, but shall be reported separately.

(c) In preparing the report, all receipts and expenditures shall be reported as of December 31 of the previous year.

(3) The summary report shall contain a paragraph signed by the officeholder certifying

that, to the best of the officeholder's knowledge, all receipts and all expenditures have been reported as of December 31 of the last calendar year and that there are no bills or obligations outstanding and unpaid except as set forth in that report.

Section 87. Section **20A-11-1603** is amended to read:

20A-11-1603. Financial disclosure form -- Required when filing for candidacy -- Public availability.

(1) Candidates seeking the following offices shall file a financial disclosure with the filing officer at the time of filing a declaration of candidacy:

(a) state constitutional officer;

(b) state legislator; or

(c) State Board of Education member.

(2) A filing officer [~~shall not~~] may not accept a declaration of candidacy for an office listed in Subsection (1) unless the declaration of candidacy is accompanied by the financial disclosure required by this section.

(3) The financial disclosure form shall contain the same requirements and shall be in the same format as the financial disclosure form described in Section 76-8-109.

(4) The financial disclosure form shall:

(a) be made available for public inspection at the filing officer's place of business;

(b) if the filing officer is an individual other than the lieutenant governor, be provided to the lieutenant governor within five business days of the date of filing and be made publicly available at the Office of the Lieutenant Governor; and

(c) be made publicly available on the Statewide Electronic Voter Information Website administered by the lieutenant governor.

Section 88. Section **20A-14-103** is amended to read:

20A-14-103. State Board of Education members -- When elected -- Qualifications -- Avoiding conflicts of interest.

(1) (a) In 2002 and every four years thereafter, one member each shall be elected from new Districts 2, 3, 5, 6, 9, 10, 14, and 15 to serve a four-year term.

(b) In 2004 and every four years thereafter, one member each shall be elected from new Districts 4, 7, 8, 11, 12, and 13 to serve a four-year term.

(c) (i) Because of the combination of certain former districts, the state school board members elected from old Districts 2 and 4 who will reside in new District 1 may not serve out the term for which they were elected, but shall stand for election in 2002 for a term of office of four years from the realigned district in which each resides.

(ii) If one of the incumbent state school board members from new District 1 indicates in writing to the lieutenant governor that the school board member will not seek reelection, that incumbent state school board member may serve until January 1, 2003 and the other incumbent state school board member shall serve out the term for which the member was elected, which is until January 1, 2005.

(2) (a) A person seeking election to the state school board [~~must~~] shall have been a resident of the state school board district in which the person is seeking election for at least one year as of the date of the election.

(b) A person who has resided within the state school board district, as the boundaries of the district exist on the date of the election, for one year immediately preceding the date of the election shall be considered to have met the requirements of this Subsection (2).

(3) A member shall:

(a) be and remain a registered voter in the state board district from which the member was elected or appointed; and

(b) maintain the member's primary residence within the state board district from which the member was elected or appointed during the member's term of office.

(4) A member of the State Board of Education may not, during the member's term of office, also serve as an employee of:

(a) the board;

(b) the Utah State Office of Education; or

(c) the Utah State Office of Rehabilitation.

Section 89. Section **20A-14-201** is amended to read:

20A-14-201. Boards of education -- School board districts -- Creation -- Reapportionment.

(1) (a) The county legislative body, for local school districts whose boundaries encompass more than a single municipality, and the municipal legislative body, for school districts contained completely within a municipality, shall divide the local school district into local school board districts as required under Subsection 20A-14-202(1)(a).

(b) The county and municipal legislative bodies shall divide the school district so that the local school board districts are substantially equal in population and are as contiguous and compact as practicable.

(2) (a) County and municipal legislative bodies shall reapportion district boundaries to meet the population, compactness, and contiguity requirements of this section:

(i) at least once every 10 years;

(ii) if a new district is created:

(A) within 45 days after the canvass of an election at which voters approve the creation of a new district; and

(B) at least 60 days before the candidate filing deadline for a school board election;

(iii) whenever districts are consolidated;

(iv) whenever a district loses more than 20% of the population of the entire school district to another district;

(v) whenever a district loses more than 50% of the population of a local school board district to another district;

(vi) whenever a district receives new residents equal to at least 20% of the population of the district at the time of the last reapportionment because of a transfer of territory from another district; and

(vii) whenever it is necessary to increase the membership of a board from five to seven members as a result of changes in student membership under Section 20A-14-202.

(b) If a school district receives territory containing less than 20% of the population of the transferee district at the time of the last reapportionment, the local school board may assign

the new territory to one or more existing school board districts.

(3) (a) Reapportionment does not affect the right of any school board member to complete the term for which the member was elected.

(b) (i) After reapportionment, representation in a local school board district shall be determined as provided in this Subsection (3).

(ii) If only one board member whose term extends beyond reapportionment lives within a reapportioned local school board district, that board member shall represent that local school board district.

(iii) (A) If two or more members whose terms extend beyond reapportionment live within a reapportioned local school board district, the members involved shall select one member by lot to represent the local school board district.

(B) The other members shall serve at-large for the remainder of their terms.

(C) The at-large board members shall serve in addition to the designated number of board members for the board in question for the remainder of their terms.

(iv) If there is no board member living within a local school board district whose term extends beyond reapportionment, the seat shall be treated as vacant and filled as provided in this part.

(4) (a) If, before an election affected by reapportionment, the county or municipal legislative body that conducted the reapportionment determines that one or more members [~~must~~] shall be elected to terms of two years to meet this part's requirements for staggered terms, the legislative body shall determine by lot which of the reapportioned local school board districts will elect members to two-year terms and which will elect members to four-year terms.

(b) All subsequent elections are for four-year terms.

(5) Within 10 days after any local school board district boundary change, the county or municipal legislative body making the change shall send an accurate map or plat of the boundary change to the Automated Geographic Reference Center created under Section 63F-1-506.

Section 90. Section **20A-14-202** is amended to read:

20A-14-202. Local boards of education -- Membership -- When elected -- Qualifications -- Avoiding conflicts of interest.

(1) (a) Except as provided in Subsection (1)(b), the board of education of a school district with a student population of up to 24,000 students shall consist of five members.

(b) The board of education of a school district with a student population of more than 10,000 students but fewer than 24,000 students shall increase from five to seven members beginning with the 2004 regular general election.

(c) The board of education of a school district with a student population of 24,000 or more students shall consist of seven members.

(d) Student population is based on the October 1 student count submitted by districts to the State Office of Education.

(e) If the number of members of a local school board is required to change under Subsection (1)(b), the board shall be reapportioned and elections conducted as provided in Sections 20A-14-201 and 20A-14-203.

(f) A school district which now has or increases to a seven-member board shall maintain a seven-member board regardless of subsequent changes in student population.

(g) (i) Members of a local board of education shall be elected at each regular general election.

(ii) Except as provided in Subsection (1)(g)(iii), no more than three members of a local board of education may be elected to a five-member board, nor more than four members elected to a seven-member board, in any election year.

(iii) More than three members of a local board of education may be elected to a five-member board and more than four members elected to a seven-member board in any election year only when required by reapportionment or to fill a vacancy or to implement Subsection (1)(b).

(h) One member of the local board of education shall be elected from each local school board district.

(2) (a) For an election held after the 2008 general election, a person seeking election to

a local school board [~~must~~] shall have been a resident of the local school board district in which the person is seeking election for at least one year as of the date of the election.

(b) A person who has resided within the local school board district, as the boundaries of the district exist on the date of the election, for one year immediately preceding the date of the election shall be considered to have met the requirements of this Subsection (2).

(3) A member of a local school board shall:

(a) be and remain a registered voter in the local school board district from which the member is elected or appointed; and

(b) maintain the member's primary residence within the local school board district from which the member is elected or appointed during the member's term of office.

(4) A member of a local school board may not, during the member's term in office, also serve as an employee of that board.

Section 91. Section **22-1-11** is amended to read:

22-1-11. Transactions prior to May 12, 1925, excepted.

The provisions of this chapter [~~shall not~~] do not apply to transactions taking place prior to May 12, 1925.

Section 92. Section **22-3-104** is amended to read:

22-3-104. Trustee's power to adjust.

(1) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or [~~must~~] shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Subsection 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).

(2) In deciding whether and to what extent to exercise the power conferred by Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(a) the nature, purpose, and expected duration of the trust;

(b) the intent of the settlor;

(c) the identity and circumstances of the beneficiaries;

(d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(e) (i) the assets held in the trust;

(ii) the extent to which [~~they~~] the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;

(iii) the extent to which an asset is used by a beneficiary; and

(iv) whether an asset was purchased by the trustee or received from the settlor;

(f) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(g) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(i) the anticipated tax consequences of an adjustment.

(3) A trustee may not make an adjustment:

(a) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(b) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) from any amount that is permanently set aside for charitable purposes under a will

or the terms of a trust unless both income and principal are so set aside;

(e) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(g) if the trustee is a beneficiary of the trust; or

(h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(4) If Subsection (3)(e), (f), (g), or (h) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(5) A trustee may release the entire power conferred by Subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in Subsections (3)(a) through (f) or Subsection (3)(h) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (3). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(6) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by Subsection (1).

Section 93. Section **22-3-202** is amended to read:

22-3-202. Distribution to residuary and remainder beneficiaries.

(1) Each beneficiary described in Subsection 22-3-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following rules apply:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(c) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(d) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Section 94. Section **22-3-302** is amended to read:

22-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(1) A trustee shall allocate an income receipt or disbursement other than one to which Subsection 22-3-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement [~~must~~] shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins [~~must~~] shall be allocated to principal and the balance [~~must~~] shall be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 22-3-401 applies are considered to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Section 95. Section **22-3-303** is amended to read:

22-3-303. Apportionment when income interest ends.

(1) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) When a mandatory income interest ends, the trustee shall pay to a mandatory

income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked [~~must~~] shall be added to principal.

(3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Section 96. Section **22-3-403** is amended to read:

22-3-403. Receipts from entities -- Business and other activities conducted by trustee.

(1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts [~~must~~] shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(3) Activities for which a trustee may maintain separate accounting records include:

(a) retail, manufacturing, service, and other traditional business activities;

(b) farming;

(c) raising and selling livestock and other animals;

(d) management of rental properties;

(e) extraction of minerals and other natural resources;

(f) timber operations; and

(g) activities to which Section 22-3-414 applies.

Section 97. Section **22-3-405** is amended to read:

22-3-405. Receipts not normally apportioned -- Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, [~~must~~] shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Section 98. Section **22-3-406** is amended to read:

22-3-406. Receipts not normally apportioned -- Obligation to pay money.

(1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, [~~must~~] shall be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust [~~must~~] shall be allocated to income.

(3) This section does not apply to an obligation to which Section 22-3-409, 22-3-410, 22-3-411, 22-3-412, 22-3-414, or 22-3-415 applies.

Section 99. Section **22-3-411** is amended to read:

22-3-411. Receipts normally apportioned -- Minerals, water, and other natural resources.

(1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt [~~must~~] shall be allocated to income.

(b) If received from a production payment, a receipt [~~must~~] shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance [~~must~~] shall be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90% [~~must~~] shall be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in Subsection (1)(a), (b), or (c), 90% of the net amount received [~~must~~] shall be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable [~~must~~] shall be allocated to income. If the water is not renewable, 90% of the amount [~~must~~] shall be allocated to principal and the balance to income.

(3) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on May 3, 2004, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before May 3, 2004. If the trust acquires an interest in minerals, water, or other natural resources after May 3, 2004, the trustee shall allocate receipts from the interest as provided in this chapter.

Section 100. Section **22-3-414** is amended to read:

22-3-414. Receipts normally apportioned -- Derivatives and options.

(1) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under Section 22-3-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option [~~must~~] shall be allocated to principal. An amount paid to acquire the option [~~must~~] shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, [~~must~~] shall be allocated to principal.

Section 101. Section **22-3-505** is amended to read:

22-3-505. Income taxes.

(1) A tax required to be paid by a trustee based on receipts allocated to income [~~must~~] shall be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal [~~must~~] shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income [~~must~~] shall be paid:

(a) from income to the extent that receipts from the entity are allocated only to income;

(b) from principal to the extent that receipts from the entity are allocated only to

principal;

(c) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(d) from principal to the extent that the tax exceeds the total receipts from the entity.

(4) After applying Subsections (1) through (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Section 102. Section **22-3-506** is amended to read:

22-3-506. Adjustments between principal and income because of taxes.

(1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(a) elections and decisions, other than those described in Subsection (2), that the fiduciary makes from time to time regarding tax matters;

(b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(c) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement [~~must~~] shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary

whose income taxes are reduced [~~must~~] shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Section 103. Section **22-3-601** is amended to read:

22-3-601. Uniformity of application and construction.

In applying and construing this chapter, consideration [~~must~~] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 104. Section **23-13-2** is amended to read:

23-13-2. Definitions.

As used in this title:

(1) "Activity regulated under this title" means any act, attempted act, or activity prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

(a) fishing;

(b) hunting;

(c) trapping;

(d) taking;

(e) permitting any dog, falcon, or other domesticated animal to take;

(f) transporting;

(g) possessing;

(h) selling;

(i) wasting;

(j) importing;

(k) exporting;

(l) rearing;

(m) keeping;

(n) utilizing as a commercial venture; and

(o) releasing to the wild.

(2) "Aquatic animal" has the meaning provided in Section 4-37-103.

(3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or amphibians.

(4) "Aquaculture facility" has the meaning provided in Section 4-37-103.

(5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(6) "Big game" means species of hoofed protected wildlife.

(7) "Carcass" means the dead body of an animal or its parts.

(8) "Certificate of registration" means a document issued under this title, or any rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit, or tag.

(9) "Closed season" means the period of time during which the taking of protected wildlife is prohibited.

(10) "Conservation officer" means a full-time, permanent employee of the Division of Wildlife Resources who is POST certified as a peace or a special function officer.

(11) "Dedicated hunter program" means a program that provides:

(a) expanded hunting opportunities;

(b) opportunities to participate in projects that are beneficial to wildlife; and

(c) education in hunter ethics and wildlife management principles.

(12) "Division" means the Division of Wildlife Resources.

(13) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) To create a new domicile an individual [~~must~~] shall:

(i) abandon the old domicile; and

(ii) be able to prove that a new domicile has been established.

(14) "Endangered" means wildlife designated as endangered according to Section 3 of

the federal Endangered Species Act of 1973.

(15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

(16) "Feral" means an animal that is normally domesticated but has reverted to the wild.

(17) "Fishing" means to take fish or crayfish by any means.

(18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and Castoridae families, except coyote and cougar.

(19) "Game" means wildlife normally pursued, caught, or taken by sporting means for human use.

(20) "Guide" means a person who receives compensation or advertises services for assisting another person to take protected wildlife, including the provision of food, shelter, or transportation, or any combination of these.

(21) "Guide's agent" means a person who is employed by a guide to assist another person to take protected wildlife.

(22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any means.

(23) "Intimidate or harass" means to physically interfere with or impede, hinder, or diminish the efforts of an officer in the performance of the officer's duty.

(24) "Nonresident" means a person who does not qualify as a resident.

(25) "Open season" means the period of time during which protected wildlife may be legally taken.

(26) "Pecuniary gain" means the acquisition of money or something of monetary value.

(27) "Permit" means a document, including a stamp, that grants authority to engage in specified activities under this title or a rule or proclamation of the Wildlife Board.

(28) "Person" means an individual, association, partnership, government agency, corporation, or an agent of the foregoing.

(29) "Possession" means actual or constructive possession.

(30) "Possession limit" means the number of bag limits one individual may legally

possess.

(31) (a) "Private fish pond" means a body of water where privately owned, protected aquatic wildlife are propagated or kept for a noncommercial purpose.

(b) "Private fish pond" does not include an aquaculture facility or fee fishing facility.

(32) "Private wildlife farm" means an enclosed place where privately owned birds or furbearers are propagated or kept and that restricts the birds or furbearers from:

(a) commingling with wild birds or furbearers; and

(b) escaping into the wild.

(33) "Proclamation" means the publication used to convey a statute, rule, policy, or pertinent information as it relates to wildlife.

(34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection (3), except as provided in Subsection (34)(b).

(b) "Protected aquatic wildlife" does not include aquatic insects.

(35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as provided in Subsection (35)(b).

(b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel, jack rabbit, muskrat, and raccoon.

(36) "Released to the wild" means to be turned loose from confinement.

(37) (a) "Resident" means a person who:

(i) has been domiciled in the state for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

(b) A Utah resident retains Utah residency if that person leaves this state:

(i) to serve in the armed forces of the United States or for religious or educational purposes; and

(ii) the person complies with Subsection (37)(a)(ii).

(c) (i) A member of the armed forces of the United States and dependents are residents

for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(A) is not on temporary duty in this state; and

(B) complies with Subsection (37)(a)(ii).

(ii) A copy of the assignment orders [~~must~~] shall be presented to a wildlife division office to verify the member's qualification as a resident.

(d) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(i) has been present in this state for 60 consecutive days immediately preceding the purchase of the license; and

(ii) complies with Subsection (37)(a)(ii).

(e) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(f) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging, or trading.

(39) "Small game" means species of protected wildlife:

(a) commonly pursued for sporting purposes; and

(b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey, cougar, and bear.

(40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for human consumption.

(41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest while having in possession a weapon by which protected wildlife may be killed.

(42) "Tag" means a card, label, or other identification device issued for attachment to the carcass of protected wildlife.

(43) "Take" means to:

(a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected wildlife; or

(b) attempt any action referred to in Subsection (43)(a).

(44) "Threatened" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(45) "Trapping" means taking protected wildlife with a trapping device.

(46) "Trophy animal" means an animal described as follows:

(a) deer - a buck with an outside antler measurement of 24 inches or greater;

(b) elk - a bull with six points on at least one side;

(c) bighorn, desert, or rocky mountain sheep - a ram with a curl exceeding half curl;

(d) moose - a bull with at least one antler exceeding five inches in length;

(e) mountain goat - a male or female;

(f) pronghorn antelope - a buck with horns exceeding 14 inches; or

(g) bison - a bull.

(47) "Waste" means to abandon protected wildlife or to allow protected wildlife to spoil or to be used in a manner not normally associated with its beneficial use.

(48) "Water pollution" means the introduction of matter or thermal energy to waters within this state that:

(a) exceeds state water quality standards; or

(b) could be harmful to protected wildlife.

(49) "Wildlife" means:

(a) crustaceans, including brine shrimp and crayfish;

(b) mollusks; and

(c) vertebrate animals living in nature, except feral animals.

Section 105. Section **23-13-17** is amended to read:

23-13-17. Spotlighting of coyote, red fox, striped skunk, and raccoon -- County ordinances -- Permits.

(1) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to this section.

(2) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon [~~must~~] shall be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(3) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6a-102.

(4) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(5) (a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) (i) A fee may be charged for a spotlighting permit.

(ii) Any permit fee shall be established by the county ordinance.

(iii) Revenues generated by the permit fee shall be remitted to the Division of Wildlife Resources for deposit into the Wildlife Resources Account, except the Wildlife Board may allow any county that enacts an ordinance pursuant to this section to retain a reasonable amount to pay for the costs of administering and enforcing the ordinance, provided this use of the permit revenues does not affect federal funds received by the state under 16 U.S.C. Sec. 669 et seq., Wildlife Restoration Act and 16 U.S.C. Sec. 777 et seq., Sport Fish Restoration Act.

(6) A county may require hunters to notify the county sheriff of the time and place they

will be engaged in spotlighting.

(7) The requirement that a county ordinance [~~must~~] shall be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or [~~his~~] the person's agent who is lawfully acting to protect [~~his~~] the person's crops or domestic animals from predation by those animals; or

(b) an animal damage control agent acting in [~~his~~] the agent's official capacity under a memorandum of agreement with the division.

Section 106. Section **23-14-2** is amended to read:

23-14-2. Wildlife Board -- Creation -- Membership -- Terms -- Quorum -- Meetings -- Per diem and expenses.

(1) There is created a Wildlife Board which shall consist of seven members appointed by the governor with the consent of the Senate.

(2) (a) In addition to the requirements of Section 79-2-203, the members of the board shall have expertise or experience in at least one of the following areas:

(i) wildlife management or biology;

(ii) habitat management, including range or aquatic;

(iii) business, including knowledge of private land issues; and

(iv) economics, including knowledge of recreational wildlife uses.

(b) Each of the areas of expertise under Subsection (2)(a) shall be represented by at least one member of the Wildlife Board.

(3) (a) The governor shall select each board member from a list of nominees submitted by the nominating committee pursuant to Section 23-14-2.5.

(b) No more than two members shall be from a single wildlife region described in Subsection 23-14-2.6(1).

(c) The governor may request an additional list of at least two nominees from the nominating committee if the initial list of nominees for a given position is unacceptable.

(d) (i) If the governor fails to appoint a board member within 60 days after receipt of the initial or additional list, the nominating committee shall make an interim appointment by

majority vote.

(ii) The interim board member shall serve until the matter is resolved by the committee and the governor or until the board member is replaced pursuant to this chapter.

(4) (a) Except as required by Subsection (4)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a six-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that:

(i) the terms of board members are staggered so that approximately [~~1/3~~] one-third of the board is appointed every two years; and

(ii) members serving from the same region have staggered terms.

(c) If a vacancy occurs, the nominating committee shall submit two names, as provided in Subsection 23-14-2.5(4), to the governor and the governor shall appoint a replacement for the unexpired term.

(d) Board members may serve only one term unless:

(i) the member is among the first board members appointed to serve four years or less; or

(ii) the member filled a vacancy under Subsection (4)(c) for four years or less.

(5) (a) The board shall elect a chair and a vice chair from its membership.

(b) Four members of the board shall constitute a quorum.

(c) The director of the Division of Wildlife Resources shall act as secretary to the board but [~~shall not be~~] is not a voting member of the board.

(6) (a) The Wildlife Board shall hold a sufficient number of public meetings each year to expeditiously conduct its business.

(b) Meetings may be called by the chair upon five days notice or upon shorter notice in emergency situations.

(c) Meetings may be held at the Salt Lake City office of the Division of Wildlife Resources or elsewhere as determined by the Wildlife Board.

(7) A member may not receive compensation or benefits for the member's service, but

may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) The members of the Wildlife Board shall complete an orientation course to assist them in the performance of the duties of their office.

(b) The Department of Natural Resources shall provide the course required under Subsection (8)(a).

Section 107. Section **23-15-2** is amended to read:

23-15-2. Jurisdiction of division over public or private land and waters.

All wildlife within this state, including [~~but not limited to~~] wildlife on public or private land or in public or private waters within this state, shall fall within the jurisdiction of the Division of Wildlife Resources.

Section 108. Section **23-15-9** is amended to read:

23-15-9. Possession or transportation of live aquatic wildlife unlawful except as authorized -- Exceptions.

It is unlawful for any person to possess or transport live protected aquatic wildlife except as provided by this code or the rules and regulations of the Wildlife Board. This section [~~shall not~~] does not apply to tropical and goldfish species intended for exhibition or commercial purposes. Operators of a properly registered private fish pond may transport live aquatic wildlife specified by the Wildlife Board in the operator's certificate of registration.

Section 109. Section **23-16-3** is amended to read:

23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation equipment by big game animals -- Notice to division.

(1) (a) If big game animals are damaging cultivated crops, livestock forage, fences, or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of the damage, request that the division take action to alleviate the depredation

problem.

(b) The landowner or lessee shall allow division personnel reasonable access to the property sustaining damage to verify and alleviate the depredation problem.

(2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a), the division shall investigate the situation, and if it appears that depredation by big game animals may continue, the division shall:

(i) remove the big game animals causing depredation; or

(ii) implement a depredation mitigation plan which has been approved, in writing, by the landowner or lessee.

(b) A depredation mitigation plan may provide for any or all of the following:

(i) the scheduling of a depredation hunt;

(ii) issuing permits to the landowners or lessees, to take big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board;

(iii) allowing landowners or lessees to designate recipients who may obtain a mitigation permit to take big game animals on the landowner's or lessee's land during a general or special season hunt authorized by the Wildlife Board; or

(iv) a description of how the division will assess and compensate the landowner or lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

(c) (i) The division shall specify the number and sex of the big game animals that may be taken pursuant to Subsections (2)(b)(ii) and (iii).

(ii) Control efforts shall be directed toward antlerless animals, if possible.

(d) A permit issued for an antlered animal [~~must~~] shall be approved by the division director or the director's designee.

(e) The division and the landowner or lessee shall jointly determine the number of animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may retain possession.

(f) In determining appropriate remedial action under this Subsection (2), the division shall consider:

(i) the extent of damage experienced or expected; and

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

(B) use of landowner association permits;

(C) use of mitigation permits; and

(D) charging for hunter access.

(3) Any fee for accessing the owner's or lessee's land shall be determined by the landowner or lessee.

(4) (a) If the landowner or lessee who approved the depredation mitigation plan under Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or lessee may revoke his or her approval of the plan and again request that the division take action pursuant to Subsection (2)(a)(i).

(b) A subsequent request for action provided under Subsection (4)(a) shall be considered to be a new request for purposes of the 72-hour time limit specified in Subsection (2)(a).

(5) (a) The division may enter into a conservation lease with the owner or lessee of private lands for a fee or other remuneration as compensation for depredation.

(b) Any conservation lease entered into under this section shall provide that the claimant may not unreasonably restrict hunting on the land or passage through the land to access public lands for the purpose of hunting, if those actions are necessary to control or mitigate damage by big game.

Section 110. Section **23-16-4** is amended to read:

23-16-4. Compensation for damage to crops, fences, or irrigation equipment -- Limitations -- Appeals.

(1) The division may provide compensation to claimants for damage caused by big game to:

(a) cultivated crops from or on cleared and planted land;

(b) fences on private land; or

(c) irrigation equipment on private land.

(2) To be eligible to receive compensation as provided in this section, the claimant shall:

(a) [~~must~~] notify the division of the damage within 72 hours after the damage is discovered; and

(b) allow division personnel reasonable access to the property to verify and alleviate the depredation problem.

(3) (a) The appraisal of the damage shall be made by the claimant and the division as soon after notification as possible.

(b) In determining damage payment, the division and claimant shall consider:

(i) the extent of damage experienced; and

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

(B) use of landowner association permits;

(C) use of mitigation permits; and

(D) charging for hunter access.

(c) In determining how to assess and compensate for damages to cultivated crops, the division's determination shall be based on the:

(i) full replacement value in the local market of the cultivated crops that actually have been or will be damaged or consumed by big game animals; and

(ii) cost of delivery of a replacement crop to the location of the damaged crop or other location that is not farther from the source of the replacement crop.

(d) If the claimant and the division are unable to agree on a fair and equitable damage payment, they shall designate a third party, consisting of one or more persons familiar with the crops, fences, or irrigation equipment and the type of game animals doing the damage, to appraise the damage.

(4) (a) Notwithstanding Section 63J-1-504, the total amount of compensation that may be provided by the division pursuant to this section and the total cost of fencing materials

provided by the division to prevent crop damage may not exceed the legislative appropriation for fencing material and compensation for damaged crops, fences, and irrigation equipment.

(b) (i) Any claim of $1,000 or less may be paid after appraisal of the damage as provided in Subsection (3), unless the claim brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $1,000.

(ii) Any claim for damage to irrigation equipment may be paid after appraisal of the damage as provided in Subsection (3).

(c) (i) Any claim in excess of $1,000, or claim that brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $1,000, shall be treated as follows:

(A) $1,000 may be paid pursuant to the conditions of this section; and

(B) the amount in excess of $1,000 may not be paid until the total amount of the approved claims of all the claimants and expenses for fencing materials for the fiscal year are determined.

(ii) If the total exceeds the amount appropriated by the Legislature pursuant to Subsection (4)(a), claims in excess of $1,000, or any claim that brings the total amount of a claimant's claims in a fiscal year to an amount in excess of $1,000, shall be prorated.

(5) The division may deny or limit compensation if the claimant:

(a) has failed to exercise reasonable care and diligence to avoid the loss or minimize the damage; or

(b) has unreasonably restricted hunting on land under the claimant's control or passage through the land to access public lands for the purpose of hunting, after receiving written notification from the division of the necessity of allowing such hunting or access to control or mitigate damage by big game.

(6) (a) The Wildlife Board shall make rules specifying procedures for the appeal of division actions under this section.

(b) Upon the petition of an aggrieved party to a final division action, the Wildlife Board may review the action on the record and issue an order modifying or rescinding the

division action.

(c) A qualified hearing examiner may be appointed for purposes of taking evidence and making recommendations for a board order. The board shall consider the recommendations of the examiner in making decisions.

(d) Board review of final agency action and judicial review of final board action shall be governed by Title 63G, Chapter 4, Administrative Procedures Act.

Section 111. Section **23-17-4** is amended to read:

23-17-4. Crop damage by pheasants -- Notice to division.

Whenever pheasants are damaging cultivated crops on cleared and planted land, the owner of such crops shall immediately upon discovery of such damage notify the Division of Wildlife Resources. This notice [~~must~~] shall be made both orally and in writing. Upon being notified of such damage, the Division of Wildlife Resources shall, as far as possible, control such damage.

Section 112. Section **23-17-6** is amended to read:

23-17-6. Commercial hunting area -- Registration -- Requirements for hunters.

(1) (a) Any person desiring to operate a commercial hunting area within this state to permit the releasing and shooting of pen-raised birds may apply to the Wildlife Board for authorization to do so.

(b) The Wildlife Board may issue the applicant a certificate of registration to operate a commercial hunting area in accordance with rules prescribed by the board.

(c) The Wildlife Board may determine the number of commercial hunting areas that may be established in each county of the state.

(2) Any certificate of registration issued under Subsection (1) shall specify the species of birds that the applicant may propagate, keep, and release for shooting on the area covered by the certificate of registration. The applicant may charge a fee for harvesting these birds.

(3)(a) Any person hunting within the state on any commercial hunting area [~~must~~] shall:

(i) be at least 12 years old;

(ii) possess proof of passing a division-approved hunter education course, if the person was born after December 31, 1965; and

(iii) have the permission of the owner or operator of the commercial hunting area.

(b) The operator of a commercial hunting area shall verify that each hunter on the commercial hunting area meets the requirements of Subsections (3)(a)(i) and (3)(a)(ii).

(4) Hunting on commercial hunting areas shall be permitted only during the commercial hunting area season prescribed by the Wildlife Board.

Section 113. Section **23-17-8** is amended to read:

23-17-8. Dog field meets.

It is lawful within the state [~~of Utah~~] to hold dog field meets or trials where dogs are permitted to work in exhibition or contest where the skill of dogs is demonstrated by locating or retrieving birds which have been obtained from a legal source. Before any meet or trial is held, application [~~must~~] shall be made in writing to the Division of Wildlife Resources, which may authorize the meet or trial under rules and regulations promulgated by the Wildlife Board.

Section 114. Section **23-18-5** is amended to read:

23-18-5. Fur dealer and fur dealer's agent -- Definitions -- Certificates of registration required -- Receipts required.

(1) Any person engaging in, carrying on, or conducting, wholly or in part, the business of buying, selling, trading, or dealing, within the state [~~of Utah~~], in the skins or pelts of furbearing mammals shall be deemed a fur dealer within the meaning of this code. All fur dealers [~~must~~] shall secure a fur dealer certificate of registration from the Division of Wildlife Resources, but no certificate of registration shall be required for a licensed trapper or fur farmer selling skins or pelts which [~~he~~] the licensed trapper or fur farmer has lawfully taken, or raised, nor for any person not a fur dealer who purchases any such skins or pelts exclusively for [~~his~~] the person's own use and not for sale.

(2) Any person who is employed by a resident or nonresident fur dealer as a fur buyer, in the field, is deemed a fur dealer's agent. Application for a fur dealer's agent certificate of registration [~~must~~] shall be made by the fur dealer employing the agent, and no agent certificate

of registration shall be issued until the necessary fur dealer certificate of registration has been first secured by the employer of the agent.

(3) Receipts [~~must~~] shall be issued by the vendor to the vendee whenever the skins or pelts of furbearing mammals [~~shall~~] change ownership by virtue of sale, exchange, barter or gift; and both the vendor and vendee shall produce this receipt or evidence of legal transaction upon request by the Division of Wildlife Resources or other person authorized to enforce the provisions of this code.

Section 115. Section **23-19-9** is amended to read:

23-19-9. Suspension of license or permit privileges -- Suspension of certificates of registration.

(1) As used in this section, "license or permit privileges" means the privilege of applying for, purchasing, and exercising the benefits conferred by a license or permit issued by the division.

(2) A hearing officer, appointed by the division, may suspend a person's license or permit privileges if:

(a) in a court of law, the person:

(i) is convicted of:

(A) violating this title or a rule of the Wildlife Board;

(B) killing or injuring domestic livestock while engaged in an activity regulated under this title; or

(C) violating Section 76-10-508 while engaged in an activity regulated under this title;

(ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

(iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person enters into a diversion agreement which suspends the prosecution of the offense; and

(b) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly, as defined in Section 76-2-103.

(3) (a) The Wildlife Board shall make rules establishing guidelines that a hearing

officer shall consider in determining:

(i) the type of license or permit privileges to suspend; and

(ii) the duration of the suspension.

(b) The Wildlife Board shall ensure that the guidelines established under Subsection (3)(a) are consistent with Subsections (4), (5), and (6).

(4) Except as provided in Subsections (5) and (6), a hearing officer may suspend a person's license or permit privileges according to Subsection (2) for a period of time not to exceed:

(a) seven years for:

(i) a felony conviction;

(ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a felony, the prosecution of which is suspended pursuant to a diversion agreement;

(b) five years for:

(i) a class A misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class A misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement;

(c) three years for:

(i) a class B misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor when the plea is held in abeyance according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class B misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; and

(d) one year for:

(i) a class C misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor, when the plea is held in abeyance according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class C misdemeanor, the prosecution of which is suspended according to a diversion agreement.

(5) The hearing officer may double a suspension period established in Subsection (4) for offenses:

(a) committed in violation of an existing suspension or revocation order issued by the courts, division, or Wildlife Board; or

(b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

(6) (a) A hearing officer may suspend, according to Subsection (2), a person's license or permit privileges for a particular license or permit only once for each single criminal episode, as defined in Section 76-1-401.

(b) If a hearing officer addresses two or more single criminal episodes in a hearing, the suspension periods of any license or permit privileges of the same type suspended, according to Subsection (2), may run consecutively.

(c) If a hearing officer suspends, according to Subsection (2), license or permit privileges of the type that have been previously suspended by a court, a hearing officer, or the Wildlife Board and the suspension period has not expired, the suspension periods may run consecutively.

(7) (a) A hearing officer, appointed by the division, may suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

(i) the hearing officer determines the person intentionally, knowingly, or recklessly, as defined in Section 76-2-103, violated:

(A) this title;

(B) a rule or order of the Wildlife Board;

(C) the terms of a certificate of registration; or

(D) the terms of a certificate of registration application or agreement; or

(ii) the person, in a court of law:

(A) is convicted of an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration;

(B) pleads guilty or no contest to an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and the plea is held in abeyance in accordance with a plea in abeyance agreement; or

(C) is charged with an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and prosecution of the offense is suspended in accordance with a diversion agreement.

(b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the holder of the certificates of registration has violated Section 59-23-5.

(8) (a) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section.

(b) The director may not appoint a division employee who investigates or enforces wildlife violations.

(9) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations entered.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or certification of registration for the duration and of the type specified in the court order.

(d) The hearing officer shall consider any recommendation made by a sentencing court

concerning suspension before issuing a suspension order.

(10) (a) A person may not apply for, purchase, possess, or attempt to exercise the benefits conferred by any permit, license, or certificate of registration specified in an order of suspension while that order is in effect.

(b) Any license possessed or obtained in violation of the order shall be considered invalid.

(c) A person who violates Subsection (10)(a) is guilty of a class B misdemeanor.

(11) Before suspension under this section, a person [~~must~~] shall be:

(a) given written notice of any action the division intends to take; and

(b) provided with an opportunity for a hearing.

(12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing.

(c) The Wildlife Board may:

(i) take no action;

(ii) vacate or remand the decision; or

(iii) amend the period or type of suspension.

(13) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

(14) The Wildlife Board may make rules to implement this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 116. Section **23-19-14** is amended to read:

23-19-14. Persons residing in certain institutions authorized to fish without license.

(1) The Division of Wildlife Resources shall permit a person to fish without a license if:

(a) (i) the person resides in:

(A) the Utah State Developmental Center in American Fork;

(B) the state hospital;

(C) a veteran's hospital;

(D) a veteran's nursing home;

(E) a mental health center;

(F) an intermediate care facility for the mentally retarded;

(G) a group home licensed by the Department of Human Services and operated under contract with the Division of Services for People with Disabilities;

(H) a group home or other community-based placement licensed by the Department of Human Services and operated under contract with the Division of Juvenile Justice Services;

(I) a private residential facility for at-risk youth licensed by the Department of Human Services; or

(J) another similar institution approved by the division; or

(ii) the person is a youth who participates in a work camp operated by the Division of Juvenile Justice Services;

(b) the person is properly supervised by a representative of the institution; and

(c) the institution obtains from the division a certificate of registration that specifies:

(i) the date and place where the person will fish; and

(ii) the name of the institution's representative who will supervise the person fishing.

(2) The institution [~~must~~] shall apply for the certificate of registration at least 10 days before the fishing outing.

(3) (a) An institution that receives a certificate of registration authorizing at-risk youth to fish shall provide instruction to the youth on fishing laws and regulations.

(b) The division shall provide educational materials to the institution to assist it in complying with Subsection (3)(a).

Section 117. Section **23-19-17.5** is amended to read:

23-19-17.5. Lifetime hunting and fishing licenses.

(1) Lifetime licensees born after December 31, 1965, [~~must~~] shall be certified under

Section 23-19-11 before engaging in hunting.

(2) A lifetime license shall remain valid if the residency of the lifetime licensee changes to another state or country.

(3) (a) A lifetime license may be used in lieu of a hunting or fishing license.

(b) Each year, a lifetime licensee is entitled to receive without charge a permit and tag of the lifetime licensee's choice for one of the following general season deer hunts:

(i) archery;

(ii) rifle; or

(iii) muzzleloader.

(c) A lifetime licensee is subject to each requirement for special hunting and fishing permits and tags, except as provided in Subsections (3)(a) and (b).

(4) The Wildlife Board may adopt rules necessary to carry out the provisions of this section.

Section 118. Section **23-19-38.2** is amended to read:

23-19-38.2. Refunds for armed forces or public health or safety organization members -- Criteria.

(1) A member of the United States Armed Forces or public health or public safety organization who is mobilized or deployed on order in the interest of national defense or emergency and is precluded from using a purchased license, certificate, tag, or permit, may, as provided in Subsection (2):

(a) receive a refund from the division; and

(b) if the person has drawn a permit, have all opportunities to draw that permit in a future draw reinstated.

(2) To qualify, the person or a legal representative [~~must~~] shall:

(a) notify the division within a reasonable amount of time that the person is applying for a refund;

(b) surrender the license, certificate, tag, or permit to the division; and

(c) furnish satisfactory proof to the division that the person:

(i) is a member of:

(A) the United States Armed Forces;

(B) a public health organization; or

(C) a public safety organization; and

(ii) was precluded from using the license, certificate, tag, or permit as a result of being called to active duty.

(3) The Wildlife Board may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this section including allowing retroactive refund to September 11, 2001.

Section 119. Section **23-20-1** is amended to read:

23-20-1. Enforcement authority of conservation officers -- Seizure and disposition of property.

(1) Conservation officers of the division shall enforce the provisions of this title with the same authority and following the same procedures as other law enforcement officers.

(2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

(b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife shall be confiscated by the court and sold or otherwise disposed of by the division.

(ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

(iii) Migratory wildfowl may not be sold, but [~~must~~] shall be given to a charitable institution or used for other charitable purposes.

(3) Materials and devices used for the unlawful taking or possessing of protected wildlife shall be seized, and upon a finding by the court that they were used in the unlawful taking or possessing of protected wildlife, the materials and devices shall be subject to criminal or civil forfeiture under the procedures and substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(4) (a) Conservation officers may seize and impound a vehicle used for the unlawful taking or possessing of protected wildlife for any of the following purposes:

(i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

(ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search warrant; or

(iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or possessed.

(b) The division shall store any seized vehicle in a public or private garage, state impound lot, or other secured storage facility.

(5) A seized vehicle shall be released to the owner no later than 30 days after the date the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by a person who is charged with committing a felony under this title.

(6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject to criminal or civil forfeiture under the procedures and substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(b) The owner of a seized vehicle is liable for the payment of any impound fee if [~~he~~] the owner used the vehicle for the unlawful taking or possessing of wildlife and is found by a court to be guilty of a violation of this title.

(c) The owner of a seized vehicle is not liable for the payment of any impound fee or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:

(i) no charges are filed or all charges are dropped which involve the use of the vehicle for the unlawful taking or possessing of wildlife;

(ii) the person charged with using the vehicle for the unlawful taking or possessing of wildlife is found by a court to be not guilty; or

(iii) the owner did not consent to a use of the vehicle which violates this chapter.

Section 120. Section **23-20-9** is amended to read:

23-20-9. Donating protected wildlife.

(1) A person may only donate protected wildlife or their parts to another person at:

(a) the residence of the donor;

(b) the residence of the person receiving protected wildlife or their parts;

(c) a meat locker;

(d) a storage plant;

(e) a meat processing facility; or

(f) a location authorized by the Wildlife Board in rule, proclamation, or order.

(2) A written statement of donation [~~must~~] shall be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor; and

(d) the signature of the donor.

(3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big game animal to another person or organization at any place without a donation slip.

Section 121. Section **23-20-14** is amended to read:

23-20-14. Definitions -- Posted property -- Hunting by permission -- Entry on private land while hunting or fishing -- Violations -- Penalty -- Prohibitions inapplicable to officers -- Promotion of respect for private property.

(1) As used in this section:

[~~(b)~~] (a) "Cultivated land" means land which is readily identifiable as:

(i) land whose soil is loosened or broken up for the raising of crops;

(ii) land used for the raising of crops; or

(iii) pasturage which is artificially irrigated.

[~~(a)~~] (b) "Division" means the Division of Wildlife Resources.

(c) "Permission" means written authorization from the owner or person in charge to enter upon private land that is either cultivated or properly posted, and [~~must~~] shall include:

(i) the signature of the owner or person in charge;

(ii) the name of the person being given permission;

(iii) the appropriate dates; and

(iv) a general description of the property.

(d) "Properly posted" means that "No Trespassing" signs or a minimum of 100 square inches of bright yellow, bright orange, or fluorescent paint are displayed at all corners, fishing streams crossing property lines, roads, gates, and rights-of-way entering the land. If metal fence posts are used, the entire exterior side [~~must~~] shall be painted.

(2) (a) While taking wildlife or engaging in wildlife related activities, a person may not:

(i) without the permission of the owner or person in charge, enter upon privately owned land that is cultivated or properly posted;

(ii) refuse to immediately leave the private land if requested to do so by the owner or person in charge; or

(iii) obstruct any entrance or exit to private property.

(b) "Hunting by permission cards" will be provided to landowners by the division upon request.

(c) A person may not post:

(i) private property [~~he~~] the person does not own or legally control; or

(ii) land that is open to the public as provided by Section 23-21-4.

(3) (a) A person convicted of violating any provision of Subsection (2) may have [~~his~~] the person's license, tag, certificate of registration, or permit, relating to the activity engaged in at the time of the violation, revoked by a hearing officer.

(b) A hearing officer may construe any subsequent conviction which occurs within a five-year period as a flagrant violation and may prohibit the person from obtaining a new license, tag, certificate of registration, or permit for a period of up to five years.

(4) Subsection (2)(a) does not apply to peace or conservation officers in the performance of their duties.

(5) (a) The division shall provide information regarding owners' rights and sportsmen's duties:

(i) to anyone holding licenses, certificates of registration, tags, or permits to take wildlife; and

(ii) by using the public media and other sources.

(b) The restrictions in this section relating to trespassing shall be stated in all hunting and fishing proclamations issued by the Wildlife Board.

(6) Any person who violates any provision of Subsection (2) is guilty of a class B misdemeanor.

Section 122. Section **23-20-20** is amended to read:

23-20-20. Children accompanied by adults while hunting with weapon.

(1) As used in this section:

(a) "Accompanied" means at a distance within which visual and verbal communication is maintained for the purposes of advising and assisting.

(b) (i) "Electronic device" means a mechanism powered by electricity that allows communication between two or more people.

(ii) "Electronic device" includes a mobile telephone or two-way radio.

(c) "Verbal communication" means the conveyance of information through speech that does not involve an electronic device.

(2) A person younger than 14 years old who is hunting with any weapon [~~must~~] shall be accompanied by:

(a) the person's parent or legal guardian; or

(b) a responsible person who is at least 21 years old and who is approved by the person's parent or guardian.

(3) A person younger than 16 years old who is hunting big game with any weapon [~~must~~] shall be accompanied by:

(a) the person's parent or legal guardian; or

(b) a responsible person who is at least 21 years old and who is approved by the person's parent or guardian.

(4) A person who is at least 14 years old but younger than 16 years old [~~must~~] shall be accompanied by a person who is at least 21 years old while hunting wildlife, other than big game, with any weapon.

Section 123. Section **23-20-28** is amended to read:

23-20-28. Search warrants.

(1) A search warrant may be issued by a magistrate to search for any property which may constitute evidence of any violation of the provisions of this code, rules, regulations, or proclamations of the Wildlife Board upon an affidavit of any person.

(2) The search warrant shall be directed to a conservation officer or a peace officer, directing [~~him~~] the officer to search for evidence and to bring it before the magistrate.

(3) A search warrant [~~shall not~~] may not be issued except upon probable cause supported by oath or affirmation, particularly describing the place, person, or thing to be searched for and the person or thing to be seized.

(4) The warrant shall be served in the daytime, unless there is reason to believe that the service of the search warrant is required immediately because a person may:

(a) flee the jurisdiction to avoid prosecution or discovery of a violation noted above;

(b) destroy or conceal evidence of the commission of any violation; or

(c) injure another person or damage property.

(5) The search warrant may be served at night if:

(a) there is reason to believe that a violation may occur at night; or

(b) the evidence of the violation may not be available to the officers serving the warrant during the day.

Section 124. Section **23-20-29** is amended to read:

23-20-29. Interference with hunting prohibited -- Action to recover damages -- Exceptions.

(1) A person is guilty of a class B misdemeanor who intentionally interferes with the right of a person licensed and legally hunting under [~~Title 23,~~] Chapter 19, Licenses, Permits, and Tags to take wildlife by driving, harassing, or intentionally disturbing any species of wildlife for the purpose of disrupting a legal hunt, trapping, or predator control.

(2) Any directly affected person or the state may bring an action to recover civil damages resulting from a violation of Subsection (1) or a restraining order to prevent a

potential violation of Subsection (1).

(3) This section does not apply to incidental interference with a hunt caused by lawful activities including[~~, but not limited to,~~] ranching, mining, and recreation.

Section 125. Section **23-20-30** is amended to read:

23-20-30. Tagging requirements.

(1) The Wildlife Board may make rules that require the carcass of certain species of protected wildlife to be tagged.

(2) The carcass of any species of protected wildlife required to be tagged [~~must~~] shall be tagged before the carcass is moved from or the hunter leaves the site of kill.

(3) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken; and

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(4) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

Section 126. Section **23-20-31** is amended to read:

23-20-31. Requirement to wear hunter orange -- Exceptions.

(1) As used in this section:

(a) (i) "Centerfire rifle hunt" means a hunt for which a hunter may use a centerfire rifle, except as provided in Subsection (1)(a)(ii).

(ii) "Centerfire rifle hunt" does not include:

(A) a bighorn sheep hunt;

(B) a mountain goat hunt;

(C) a bison hunt;

(D) a moose hunt;

(E) a hunt requiring the hunter to possess a statewide conservation permit; or

(F) a hunt requiring the hunter to possess a statewide sportsman permit.

(b) "Statewide conservation permit" means a permit:

(i) issued by the division;

(ii) distributed through a nonprofit organization founded for the purpose of promoting wildlife conservation; and

(iii) valid:

(A) on open hunting units statewide; and

(B) for the species of big game and time period designated by the Wildlife Board.

(c) "Statewide sportsman permit" means a permit:

(i) issued by the division through a public draw; and

(ii) valid:

(A) on open hunting units statewide; and

(B) for the species of big game and time period designated by the Wildlife Board.

(2) (a) A person shall wear a minimum of 400 square inches of hunter orange material while hunting any species of big game, except as provided in Subsection (3).

(b) Hunter orange material [~~must~~] shall be worn on the head, chest, and back.

(3) A person is not required to wear the hunter orange material described in Subsection (2):

(a) during the following types of hunts, unless a centerfire rifle hunt is in progress in the same area:

(i) archery;

(ii) muzzle-loader;

(iii) mountain goat;

(iv) bighorn sheep;

(v) bison; or

(vi) moose; or

(b) as provided by a rule of the Wildlife Board.

Section 127. Section **23-21-2** is amended to read:

23-21-2. Payments in lieu of property taxes on property purchased by division.

Prior to the purchase of any real property held in private ownership, the Division of Wildlife Resources shall first submit the proposition to the county legislative body in a regular open public meeting in the county where the property is located and shall by contractual agreement with the county legislative body, approved by the executive director of the Department of Natural Resources, agree to pay an amount of money in lieu of property taxes to the county. The division shall, by contractual agreement with the county legislative body in which any property previously acquired from private ownership and now owned by the division is located, agree to pay annually an amount of money in lieu of wildlife resource fine money, previously paid to the county. Payments provided for in this section will not exceed what the regularly assessed real property taxes would be if the land had remained in private ownership; and these payments [~~shall not~~] may not include any amount for buildings, installations, fixtures, improvements or personal property located upon the land or for those acquired, constructed or placed by the division after it acquires the land.

Section 128. Section **23-22-1** is amended to read:

23-22-1. Cooperative agreements and programs authorized.

(1) The Division of Wildlife Resources may enter into cooperative agreements and programs with other state agencies, federal agencies, states, educational institutions, municipalities, counties, corporations, organized clubs, landowners, associations, and individuals for purposes of wildlife conservation.

(2) Cooperative agreements that are policy in nature [~~must~~] shall be:

(a) approved by the executive director of the Department of Natural Resources; and

(b) reviewed by the Wildlife Board.

Section 129. Section **23-22-3** is amended to read:

23-22-3. Reciprocal agreements with other states.

(1) The Wildlife Board is authorized to enter into reciprocal agreements with other states to:

(a) license and regulate fishing, hunting, and related activities; and

(b) promote and implement wildlife management programs.

(2) Reciprocal agreements [~~must~~] shall be approved by the executive director of the Department of Natural Resources.

Section 130. Section **23-23-11** is amended to read:

23-23-11. Failure to comply with rules and requirements.

A person [~~must~~] shall leave private property within a cooperative wildlife management unit immediately, upon request of a landowner, landowner association operator, or cooperative wildlife management unit agent, if that person:

(1) does not have in [~~his or her~~] that person's possession a cooperative wildlife management unit authorization or permit;

(2) endangers or has endangered human safety;

(3) damages or has damaged private property within a cooperative wildlife management unit; or

(4) fails or has failed to comply with reasonable rules of a landowner association.

Section 131. Section **23-24-1** is amended to read:

23-24-1. Procedure to obtain compensation for livestock damage done by bear, mountain lion, wolf, or eagle.

(1) As used in this section:

(a) "Damage" means injury to or loss of livestock.

(b) "Division" means the Division of Wildlife Resources.

(c) "Livestock" means cattle, sheep, goats, or turkeys.

(d) (i) "Wolf" means the gray wolf Canis lupus.

(ii) "Wolf" does not mean a wolf hybrid with a domestic dog.

(2) (a) (i) Except as provided by Subsection (2)(a)(ii), if livestock are damaged by a bear, mountain lion, wolf, or an eagle, the owner may receive compensation for the fair market value of the damage.

(ii) The owner may not receive compensation if the livestock is damaged by a wolf

within an area where a wolf is endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531, et seq.

(b) To obtain this compensation, the owner of the damaged livestock shall notify the division of the damage as soon as possible, but no later than four days after the damage is discovered.

(c) The owner [~~must~~] shall notify the division each time any damage is discovered.

(3) The livestock owner shall file a proof of loss form, provided by the division, no later than 30 days after the original notification of damage was given to the division by the owner.

(4) (a) (i) The division, with the assistance of the Department of Agriculture and Food shall:

(A) within 30 days after the owner files the proof of loss form, either accept or deny the claim for damages; and

(B) subject to Subsections (4)(a)(ii) through (4)(a)(iv), pay all accepted claims to the extent money appropriated by the Legislature is available for this purpose.

(ii) Money appropriated from the Wildlife Resources Account may be used to provide compensation for only up to 50% of the fair market value of any damaged livestock.

(iii) Money appropriated from the Wildlife Resources Account may not be used to provide compensation for livestock damaged by an eagle or a wolf.

(iv) The division may not pay any eagle damage claim until the division has paid all accepted mountain lion and bear damage claims for the fiscal year.

(b) The division may not pay mountain lion, bear, wolf, or eagle damage claims to a livestock owner unless the owner has filed a completed livestock form and the appropriate fee as outlined in Section 4-23-7 for the immediately preceding and current year.

(c) (i) Unless the division denies a claim for the reason identified in Subsection (4)(b), the owner may appeal the decision to a panel consisting of one person selected by the owner, one person selected by the division, and a third person selected by the first two panel members.

(ii) The panel shall decide whether the division should pay all of the claim, a portion of

the claim, or none of the claim.

(5) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make and enforce rules to administer and enforce this section.

Section 132. Section **24-1-8** is amended to read:

24-1-8. Criminal procedures.

(1) In cases where an owner is criminally prosecuted for conduct giving rise to forfeiture, the prosecuting attorney may elect to forfeit the owner's interest in the property civilly or criminally, provided that no civil forfeiture judgment may be entered with respect to the property of a defendant who is acquitted of the offense on which the forfeiture claim is based.

(2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the property, the information or indictment [~~must~~] shall state that the owner's interest in the specifically described property is subject to criminal forfeiture and the basis for the forfeiture.

(3) (a) Upon application of the prosecuting attorney, the court may enter restraining orders or injunctions, or take other reasonable action to preserve for forfeiture under this section any forfeitable property if, after notice to persons known, or discoverable after due diligence, to have an interest in the property and after affording them an opportunity for a hearing, the court determines that:

(i) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, transferred, destroyed, or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property or prevent its sale, transfer, destruction, or removal through the entry of the requested order outweighs the hardship against any party against whom the order is to be entered.

(b) A temporary restraining order may be entered ex parte upon application of the prosecuting attorney before or after an information or indictment has been filed with respect to the property, if the prosecuting attorney demonstrates that:

(i) there is probable cause to believe that the property with respect to which the order is sought would, in the event of a conviction, be subject to forfeiture under this section; and

(ii) provision of notice would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.

(c) The temporary order expires not more than 10 days after entry unless extended for good cause shown or unless the party against whom it is entered consents to an extension. An adversarial hearing concerning an order entered under this section shall be held as soon as practicable and prior to the expiration of the temporary order.

(d) The court is not bound by the Utah Rules of Evidence regarding evidence it may receive and consider at any hearing under this section.

(4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal forfeiture, the jury shall be instructed and asked to return a special verdict as to the extent of the property identified in the information or indictment, if any, that is forfeitable.

(b) Whether property is forfeitable shall be proven beyond a reasonable doubt.

(5) (a) Upon conviction of a person for violating any provision of state law subjecting an owner's property to forfeiture and upon the jury's special verdict that the property is forfeitable, the court shall enter a judgment and order the property forfeited to the state upon the terms stated by the court in its order.

(b) Following the entry of an order declaring property forfeited, the court may, upon application of the prosecuting attorney, enter appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state in property ordered forfeited.

(6) (a) After property is ordered forfeited under this section, the seizing agency shall direct the disposition of the property under Section 24-1-17. Any property right or interest not exercisable by or transferable for value to the state expires and does not revert to the defendant. The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property at any sale held by the seizing agency unless approved by the

judge.

(b) The court may stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm or loss to [~~him~~] the defendant.

(7) Except under Subsection (3) or (10), a party claiming an interest in property subject to criminal forfeiture under this section:

(a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of property under this section; and

(b) may not commence an action at law or equity against the state or the county concerning the validity of [~~his~~] the party's alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is subject to forfeiture under this section.

(8) The district court of the state which has jurisdiction of a case under this part may enter orders under this section without regard to the location of any property which may be subject to forfeiture under this section, or which has been ordered forfeited under this section.

(9) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the state, the court may upon application of the prosecuting attorney order that the testimony of any witness relating to the property forfeited be taken by deposition, and that any book, paper, document, record, recording, or other material not privileged shall be produced as provided for depositions and discovery under the Utah Rules of Civil Procedure.

(10) (a) Following the entry of an order of forfeiture under this section, the prosecuting attorney shall publish notice of the order's intent to dispose of the property as the court may direct. The prosecuting attorney shall also provide direct written notice to any person known to have an alleged interest in the property subject to the order of forfeiture.

(b) Any person, other than the defendant, asserting a legal interest in property which

has been ordered forfeited to the state under this section may, within 30 days of the final publication of notice or [~~his~~] the person's receipt of written notice under Subsection (10)(a), whichever is earlier, petition the court for a hearing to adjudicate the validity of [~~his~~] the person's alleged interest in the property. Any genuine issue of material fact, including issues of standing, is triable to a jury upon demand of any party.

(c) The petition shall be in writing and signed by the petitioner under penalty of perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, and any additional facts supporting the petitioner's claim and the relief sought.

(d) The trial or hearing on the petition shall be expedited to the extent practicable. The court may consolidate a trial or hearing on the petition and any petition filed by any other person under this section other than the defendant. The court shall permit the parties to conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.

(e) At the trial or hearing, the petitioner may testify and present evidence and witnesses on [~~his~~] the petitioner's own behalf and cross-examine witnesses who appear at the hearing. The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear. In addition to testimony and evidence presented at the trial or hearing, the court may consider the relevant portion of the record of the criminal case which resulted in the order of forfeiture. Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.

(f) The court shall amend the order of forfeiture in accordance with its determination, if after the trial or hearing, the court or jury determines that the petitioner has established by a preponderance of the evidence that:

(i) the petitioner has a legal right, title, or interest in the property, and the right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts or conduct which gave rise to the forfeiture of the property under this section; or

(ii) the petitioner acquired the right, title or interest in the property in a bona fide transaction for value and, at the time of such acquisition, the petitioner did not know that the property was subject to forfeiture.

(g) Following the court's disposition of all petitions filed under this Subsection (10), or if no petitions are filed following the expiration of the period provided in Subsection (10)(b) for the filing of petitions, the state has clear title to property subject to the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

Section 133. Section **25-5-2** is amended to read:

25-5-2. Wills and implied trusts excepted.

Section 25-5-1 [~~shall not~~] may not be construed to affect the power of a testator in the disposition of [~~his~~] the testator's real estate by last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

Section 134. Section **25-6-9** is amended to read:

25-6-9. Good faith transfer.

(1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment [~~must~~] shall be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.

(6) A transfer is not voidable under Subsection 25-6-6(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Section 135. Section **26-1-5** is amended to read:

26-1-5. Rules of department.

(1) Except in areas regulated by statutory committees created by this title, the department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

(2) Rules shall have the force and effect of law and may deal with matters which materially affect the security of health or the preservation and improvement of public health in the state, and any matters as to which jurisdiction is conferred upon the department by this title.

(3) Every rule adopted by the department pursuant to this section, or a committee

established under Section 26-1-7 or 26-1-7.5, shall be subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act and shall become effective at the time and in the manner provided in that act.

(4) If, at the next general session of the Legislature following the filing of a rule with the legislative research director, the Legislature passes a bill disapproving such rule, the rule shall be null and void.

(5) The department or a committee created under Section 26-1-7 or 26-1-7.5, [~~shall not~~] may not adopt a rule identical to a rule disapproved under Subsection (4) of this section, before the beginning of the next general session of the Legislature following the general session at which the rule was disapproved.

Section 136. Section **26-1-7.5** is amended to read:

26-1-7.5. Health advisory council.

(1) (a) There is created the Utah Health Advisory Council, comprised of nine persons appointed by the governor.

(b) The governor shall ensure that:

(i) members of the council:

(A) broadly represent the public interest;

(B) have an interest in or knowledge of public health, environmental health, health planning, health care financing, or health care delivery systems; and

(C) include health professionals;

(ii) the majority of the membership are nonhealth professionals;

(iii) no more than five persons are from the same political party; and

(iv) geography, sex, and ethnicity balance are considered when selecting the members.

(2) (a) Except as required by Subsection (2)(b), members of the council shall be appointed to four-year terms.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two

years.

(c) Terms of office for subsequent appointments shall commence on July 1 of the year in which the appointment occurs.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) No person shall be appointed to the council for more than two consecutive terms.

(c) The chair of the council shall be appointed by the governor from the membership of the council.

(4) The council shall meet at least quarterly or more frequently as determined necessary by the chair. A quorum for conducting business shall consist of four members of the council.

(5) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The council shall be empowered to advise the department on any subject deemed to be appropriate by the council except that the council [~~shall not~~] may not become involved in administrative matters. The council shall also advise the department as requested by the executive director.

(7) The executive director shall ensure that the council has adequate staff support and shall provide any available information requested by the council necessary for their deliberations. The council shall observe confidential requirements placed on the department in the use of such information.

Section 137. Section **26-1-11** is amended to read:

26-1-11. Executive director -- Power to amend, modify, or rescind committee rules.

The executive director pursuant to the requirements of the Administrative Rulemaking Act may amend, modify, or rescind any rule of any committee created pursuant to Section 26-1-7 if the rule creates a clear present hazard or clear potential hazard to the public health except that the executive director [~~shall not~~] may not act until after discussion with the appropriate committee.

Section 138. Section **26-1-25** is amended to read:

26-1-25. Principal and branch offices of department.

The principal office of the department shall be in Salt Lake County. The department may establish branch offices at other places in the state to furnish comprehensive and effective health programs and to render additional assistance to local health officials. This section [~~shall not~~] does not limit the powers of local health agencies.

Section 139. Section **26-1-32** is amended to read:

26-1-32. Severability of code provisions.

If any provision of this code or the application of any such provision to any person or circumstance is held invalid, the invalidity [~~shall not~~] does not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 140. Section **26-3-8** is amended to read:

26-3-8. Disclosure of health data -- Discretion of department.

Any disclosure provided for in Section 26-3-7 shall be made at the discretion of the department, except that the disclosure provided for in Subsection 26-3-7(4) [~~must~~] shall be made when the requirements of that paragraph [~~have been~~] are met.

Section 141. Section **26-4-2** is amended to read:

26-4-2. Definitions.

As used in this chapter:

(1) "Dead body" is as defined in Section 26-2-2.

(2) "Death by violence" means death that resulted by the decedent's exposure to physical, mechanical, or chemical forces, and includes death which appears to have been due to

homicide, death which occurred during or in an attempt to commit rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or any attempt to commit any of the foregoing offenses.

(3) "Medical examiner" means the state medical examiner appointed pursuant to Section 26-4-4 or a deputy appointed by the medical examiner.

(4) "Regional pathologist" means a trained pathologist licensed to practice medicine and surgery in the state, appointed by the medical examiner pursuant to Subsection 26-4-4(3).

(5) "Sudden death while in apparent good health" means apparently instantaneous death without obvious natural cause, death during or following an unexplained syncope or coma, or death during an acute or unexplained rapidly fatal illness.

(6) "Sudden infant death syndrome" means the death of a child who was thought to be in good health or whose terminal illness appeared to be so mild that the possibility of a fatal outcome was not anticipated.

(7) "Suicide" means death caused by an intentional and voluntary act of a person who understands the physical nature of the act and intends by such act to accomplish self-destruction.

(8) "Unattended death" means the death of a person who has not been seen by a physician within the scope of the physician's professional capacity within 30 days immediately prior to the date of death. This definition [~~shall not~~] does not require an investigation, autopsy, or inquest in any case where death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination.

(9) (a) "Unavailable for postmortem investigation" means that a dead body is:

(i) transported out of state;

(ii) buried at sea;

(iii) cremated; or

(iv) otherwise made unavailable to the medical examiner for postmortem investigation or autopsy.

(b) "Unavailable for postmortem investigation" does not include embalming or burial of a dead body pursuant to the requirements of law.

(10) "Within the scope of the decedent's employment" means all acts reasonably necessary or incident to the performance of work, including matters of personal convenience and comfort not in conflict with specific instructions.

Section 142. Section **26-4-9** is amended to read:

26-4-9. Custody of dead body and personal effects -- Examination of scene of death -- Preservation of body -- Autopsies.

(1) Upon notification of a death under Section 26-4-8, the medical examiner shall assume custody of the deceased body, clothing on the body, biological samples taken, and any article on or near the body which may aid [~~him~~] the medical examiner in determining the cause of death except those articles which will assist the investigative agency to proceed without delay with the investigation. In all cases the scene of the event [~~shall not~~] may not be disturbed until authorization is given by the senior ranking peace officer from the law enforcement agency having jurisdiction of the case and conducting the investigation. Where death appears to have occurred under circumstances listed in Section 26-4-7, the person or persons finding or having custody of the body, or jurisdiction over the investigation of the death, shall take reasonable precautions to preserve the body and body fluids so that minimum deterioration takes place. The body [~~shall not~~] may not be moved without permission of the medical examiner, district attorney, or county attorney having criminal jurisdiction, or his authorized deputy except in cases of affront to public decency or circumstances where it is not practical to leave the body where found, or in such cases where the cause of death is clearly due to natural causes. The body can under direction of a licensed physician or the medical examiner or his designated representative be moved to a place specified by a funeral director, the attending physician, the medical examiner, or his representative.

(2) In the event the body, where referred to the medical examiner, is moved, no

cleansing or embalming of the body shall occur without the permission of the medical examiner. An intentional or knowing violation of this Subsection (2) is a class B misdemeanor.

(3) When the medical examiner assumes lawful custody of a body under Subsection 26-4-7(3) solely because the death was unattended, an autopsy [~~shall not~~] may not be performed unless requested by the district attorney, county attorney having criminal jurisdiction, or law enforcement agency having jurisdiction of the place where the body is found, or a licensed physician, or a spouse, child, parent or guardian of the deceased, and a licensed physician. The county attorney or district attorney and law enforcement agency having jurisdiction shall consult with the medical examiner to determine the need for an autopsy. In any such case concerning unattended deaths qualifying as exempt from autopsy, a death certificate may be certified by a licensed physician. In this case the physician may be established as the medical examiner's designated representative. Requested autopsies [~~shall not~~] may not be performed when the medical examiner or [~~his~~] the medical examiner's designated representative determines the autopsy to be unnecessary, provided that an autopsy requested by a district or county attorney or law enforcement agency may only be determined to be unnecessary if the cause of death can be ascertained without an autopsy being performed.

Section 143. Section **26-4-12** is amended to read:

26-4-12. Order to exhume body -- Procedure.

(1) In case of any death described in Section 26-4-7, when a body is buried without an investigation by the medical examiner as to the cause and manner of death, it shall be the duty of the medical examiner, upon being advised of the fact, to notify the district attorney or county attorney having criminal jurisdiction where the body is buried or death occurred. Upon notification, the district attorney or county attorney having criminal jurisdiction may file an action in the district court to obtain an order to exhume the body. A district judge may order the body exhumed upon an ex parte hearing.

(2) (a) A body [~~shall not~~] may not be exhumed until notice of the order has been served upon the executor or administrator of the deceased's estate, or if no executor or administrator has been appointed, upon the nearest heir of the deceased, determined as if the deceased had

died intestate. If the nearest heir of the deceased cannot be located within the jurisdiction, then the next heir in succession within the jurisdiction may be served.

(b) The executor, administrator, or heir shall have 24 hours to notify the issuing court of any objection to the order prior to the time the body is exhumed. If no heirs can be located within the jurisdiction within 24 hours, the facts shall be reported to the issuing court which may order that the body be exhumed forthwith.

(c) Notification to the executor, administrator, or heir shall specifically state the nature of the action and the fact that any objection [~~must~~] shall be filed with the issuing court within 24 hours of the time of service.

(d) In the event an heir files an objection, the court shall set hearing on the matter at the earliest possible time and issue an order on the matter immediately at the conclusion of the hearing. Upon the receipt of notice of objection, the court shall immediately notify the county attorney who requested the order, so that the interest of the state may be represented at the hearing.

(e) When there is reason to believe that death occurred in a manner described in Section 26-4-7, the district attorney or county attorney having criminal jurisdiction may make a motion that the court, upon ex parte hearing, order the body exhumed forthwith and without notice. Upon a showing of exigent circumstances the court may order the body exhumed forthwith and without notice. In any event, upon motion of the district attorney or county attorney having criminal jurisdiction and upon the personal appearance of the medical examiner, the court for good cause may order the body exhumed forthwith and without notice.

(3) An order to exhume a body shall be directed to the medical examiner, commanding [~~him~~] the medical examiner to cause the body to be exhumed, perform the required autopsy, and properly cause the body to be reburied upon completion of the examination.

(4) The examination shall be completed and the complete autopsy report shall be made to the district attorney or county attorney having criminal jurisdiction for any action the attorney considers appropriate. The district attorney or county attorney shall submit the return of the order to exhume within 10 days in the manner prescribed by the issuing court.

Section 144. Section **26-4-20** is amended to read:

26-4-20. Officials not liable for authorized acts.

Except as provided in this chapter, a criminal or civil action [~~shall not~~] may not arise against the county attorney, district attorney, or his deputies, the medical examiner or his deputies, or regional pathologists for authorizing or performing autopsies authorized by this chapter or for any other act authorized by this chapter.

Section 145. Section **26-6-3** is amended to read:

26-6-3. Authority to investigate and control epidemic infections and communicable disease.

(1) The department has authority to investigate and control the causes of epidemic infections and communicable disease, and shall provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections or any other health hazard which may affect the public health.

(2) (a) As part of the requirements of Subsection (1), the department shall distribute to the public and to health care professionals:

(i) medically accurate information about sexually transmitted diseases that may cause infertility and sterility if left untreated, including descriptions of:

(A) the probable side effects resulting from an untreated sexually transmitted disease, including infertility and sterility;

(B) medically accepted treatment for sexually transmitted diseases;

(C) the medical risks commonly associated with the medical treatment of sexually transmitted diseases; and

(D) suggest screening by a private physician; and

(ii) information about:

(A) public services and agencies available to assist individuals with obtaining treatment for the sexually transmitted disease;

(B) medical assistance benefits that may be available to the individual with the sexually transmitted disease; and

(C) abstinence before marriage and fidelity after marriage being the surest prevention of sexually transmitted disease.

(b) The information required by Subsection (2)(a):

(i) shall be distributed by the department and by local health departments free of charge;

(ii) shall be relevant to the geographic location in which the information is distributed by:

(A) listing addresses and telephone numbers for public clinics and agencies providing services in the geographic area in which the information is distributed; and

(B) providing the information in English as well as other languages that may be appropriate for the geographic area.

(c) (i) Except as provided in Subsection (2)(c)(ii), the department shall develop written material that includes the information required by this Subsection (2).

(ii) In addition to the written materials required by Subsection (2)(c)(i), the department may distribute the information required by this Subsection (2) by any other methods the department determines is appropriate to educate the public, excluding public schools, including websites, toll free telephone numbers, and the media.

(iii) If the information required by Subsection (2)(b)(ii)(A) is not included in the written pamphlet developed by the department, the written material [~~must~~] shall include either a website, or a 24-hour toll free telephone number that the public may use to obtain that information.

Section 146. Section **26-6-18** is amended to read:

26-6-18. Venereal disease -- Consent of minor to treatment.

(1) A consent to medical care or services by a hospital or public clinic or the performance of medical care or services by a licensed physician executed by a minor who is or professes to be afflicted with a sexually transmitted disease, shall have the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as a consent given by a person of full legal age and capacity, the infancy of the minor and any contrary

provision of law notwithstanding.

(2) The consent of the minor [~~shall not be~~] is not subject to later disaffirmance by reason of minority at the time it was given and the consent of no other person or persons shall be necessary to authorize hospital or clinical care or services to be provided to the minor by a licensed physician.

(3) The provisions of this section shall apply also to minors who profess to be in need of hospital or clinical care and services or medical care or services provided by a physician for suspected sexually transmitted disease, regardless of whether such professed suspicions are subsequently substantiated on a medical basis.

Section 147. Section **26-6-20** is amended to read:

26-6-20. Serological testing of pregnant or recently delivered women.

(1) Every licensed physician and surgeon attending a pregnant or recently delivered woman for conditions relating to her pregnancy shall take or cause to be taken a sample of blood of the woman at the time of first examination or within 10 days thereafter. The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis. The provisions of this section [~~shall not~~] do not apply to any female who objects thereto on the grounds that she is a bona fide member of a specified, well recognized religious organization whose teachings are contrary to the tests.

(2) Every other person attending a pregnant or recently delivered woman, who is not permitted by law to take blood samples, shall within 10 days from the time of first attendance cause a sample of blood to be taken by a licensed physician. The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis.

(3) An approved laboratory is a laboratory approved by the department according to its rules governing the approval of laboratories for the purpose of this title. In submitting the sample to the laboratory the physician shall designate whether it is a prenatal test or a test following recent delivery.

(4) For the purpose of this chapter, a "standard serological test" means a test for syphilis approved by the department and made at an approved laboratory.

(5) The laboratory shall transmit a detailed report of the standard serological test, showing the result thereof to the physician.

Section 148. Section **26-6b-3** is amended to read:

26-6b-3. Order of restriction.

(1) The department having jurisdiction over the location where an individual or a group of individuals who are subject to restriction are found may:

(a) issue a written order of restriction for the individual or group of individuals pursuant to Subsection 26-1-30(2) or 26A-1-114(1)(b) upon compliance with the requirements of this chapter; and

(b) issue a verbal order of restriction for an individual or group of individuals pursuant to Subsection (2)(c).

(2) (a) A department's determination to issue an order of restriction shall be based upon the totality of circumstances reported to and known by the department, including:

(i) observation;

(ii) information that the department determines is credible and reliable information; and

(iii) knowledge of current public health risks based on medically accepted guidelines as may be established by the Department of Health by administrative rule.

(b) An order of restriction issued by a department [~~must~~] shall:

(i) in the opinion of the public health official, be for the shortest reasonable period of time necessary to protect the public health;

(ii) use the least intrusive method of restriction that, in the opinion of the department, is reasonable based on the totality of circumstances known to the health department issuing the order of restriction;

(iii) be in writing unless the provisions of Subsection (2)(c) apply; and

(iv) contain notice of an individual's rights as required in Section 26-6b-3.3.

(c) (i) A department may issue a verbal order of restriction, without prior notice to the individual or group of individuals if the delay in imposing a written order of restriction would

significantly jeopardize the department's ability to prevent or limit:

(A) the transmission of a communicable or possibly communicable disease that poses a threat to public health;

(B) the transmission of an infectious agent or possibly infectious agent that poses a threat to public health;

(C) the exposure or possible exposure of a chemical or biological agent that poses a threat to public health; or

(D) the exposure or transmission of a condition that poses a threat to public health.

(ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):

(A) is valid for 24 hours from the time the order of restriction is issued;

(B) may be verbally communicated to the individuals or group of individuals subject to restriction by a first responder;

(C) may be enforced by the first responder until the department is able to establish and maintain the place of restriction; and

(D) may only be continued beyond the initial 24 hours if a written order of restriction is issued pursuant to the provisions of Section 26-6b-3.3.

(3) Pending issuance of a written order of restriction under Section 26-6b-3.3, or judicial review of an order of restriction by the district court pursuant to Section 26-6b-6, an individual who is subject to the order of restriction may be required to submit to involuntary examination, quarantine, isolation, or treatment in [~~his~~] the individual's home, a hospital, or any other suitable facility under reasonable conditions prescribed by the department.

(4) The department that issued the order of restriction shall take reasonable measures, including the provision of medical care, as may be necessary to assure proper care related to the reason for the involuntary examination, treatment, isolation, or quarantine of an individual ordered to submit to an order of restriction.

Section 149. Section **26-6b-3.1** is amended to read:

26-6b-3.1. Consent to order of restriction -- Periodic review.

(1) (a) The department shall either seek judicial review of an order of restriction under

Sections 26-6b-4 through 26-6b-6, or obtain the consent of an individual subject to an order of restriction.

(b) If the department obtains consent, the consent [~~must~~] shall be in writing and [~~must~~] shall inform the individual or group of individuals:

(i) of the terms and duration of the order of restriction;

(ii) of the importance of complying with the order of restriction to protect the public's health;

(iii) that each individual has the right to agree to the order of restriction, or refuse to agree to the order of restriction and seek a judicial review of the order of restriction;

(iv) that for any individual who consents to the order of restriction:

(A) the order of restriction will not be reviewed by the district court unless the individual withdraws consent to the order of restriction in accordance with Subsection (1)(b)(iv)(B); and

(B) the individual [~~must~~] shall notify the department in writing, with at least five business day's notice, if the individual intends to withdraw consent to the order of restriction; and

(v) that a breach of a consent agreement prior to the end of the order of restriction may subject the individual to an involuntary order of restriction under Section 26-6b-3.2.

(2) (a) The department responsible for the care of an individual who has consented to the order of restriction shall periodically reexamine the reasons upon which the order of restriction was based. This reexamination [~~must~~] shall occur at least once every six months.

(b) (i) If at any time, the department determines that the conditions justifying the order of restriction for either a group or an individual no longer exist, the department shall immediately discharge the individual or group from the order of restriction.

(ii) If the department determines that the conditions justifying the order of restriction continue to exist, the department shall send to the individual a written notice of:

(A) the department's findings, the expected duration of the order of restriction, and the reason for the decision; and

(B) the individual's right to a judicial review of the order of restriction by the district court if requested by the individual.

(iii) Upon request for judicial review by an individual, the department shall:

(A) file a petition in district court within five business days after the individual's request for a judicial review; and

(B) proceed under Sections 26-6b-4 through 26-6b-6.

Section 150. Section **26-7-1** is amended to read:

26-7-1. Identification of major risk factors by department -- Education of public -- Establishment of programs.

The department shall identify the major risk factors contributing to injury, sickness, death, and disability within the state and where it determines that a need exists, educate the public regarding these risk factors, and the department may establish programs to reduce or eliminate these factors except that such programs [~~shall not~~] may not be established if adequate programs exist in the private sector.

Section 151. Section **26-8a-103** is amended to read:

26-8a-103. State Emergency Medical Services Committee -- Membership -- Report -- Expenses.

(1) The State Emergency Medical Services Committee created by Section 26-1-7 shall be composed of the following 16 members appointed by the governor, at least five of whom [~~must~~] shall reside in a county of the third, fourth, fifth, or sixth class:

(a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

(i) one surgeon who actively provides trauma care at a hospital;

(ii) one rural physician involved in emergency medical care;

(iii) two physicians who practice in the emergency department of a general acute hospital; and

(iv) one pediatrician who practices in the emergency department or critical care unit of a general acute hospital or a children's specialty hospital;

(b) one representative from a private ambulance provider;

(c) one representative from an ambulance provider that is neither privately owned nor operated by a fire department;

(d) two chief officers from fire agencies operated by the following classes of licensed or designated emergency medical services providers: municipality, county, and fire district, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d);

(e) one director of a law enforcement agency that provides emergency medical services;

(f) one hospital administrator;

(g) one emergency care nurse;

(h) one paramedic in active field practice;

(i) one emergency medical technician in active field practice;

(j) one certified emergency medical dispatcher affiliated with an emergency medical dispatch center; and

(k) one consumer.

(2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a four-year term beginning July 1.

(b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term.

(3) (a) Each January, the committee shall organize and select one of its members as chair and one member as vice chair. The committee may organize standing or ad hoc subcommittees, which shall operate in accordance with guidelines established by the committee.

(b) The chair shall convene a minimum of four meetings per year. The chair may call

special meetings. The chair shall call a meeting upon request of five or more members of the committee.

(c) Nine members of the committee constitute a quorum for the transaction of business and the action of a majority of the members present is the action of the committee.

(4) The committee shall submit a report in a form acceptable to the committee each November at the Law Enforcement and Criminal Justice Interim Committee meeting concerning its:

(a) funding priorities and recommended sources;

(b) closest responder recommendations;

(c) centralized dispatch;

(d) duplication of services and any taxing consequences;

(e) appropriate providers for emergency medical services; and

(f) recommendations and suggested legislation.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) Administrative services for the committee shall be provided by the department.

Section 152. Section **26-8a-203** is amended to read:

26-8a-203. Data collection.

(1) The committee shall specify the information that [~~must~~] shall be collected for the emergency medical services data system established pursuant to Subsection (2).

(2) The department shall establish an emergency medical services data system which shall provide for the collection of information, as defined by the committee, relating to the treatment and care of patients who use or have used the emergency medical services system.

(3) Persons providing emergency medical services shall provide information to the

department for the emergency medical services data system established pursuant to Subsection (2).

Section 153. Section **26-8a-207** is amended to read:

26-8a-207. Emergency medical services grant program.

(1) (a) The department shall receive as dedicated credits the amount established in Section 51-9-403. That amount shall be transferred to the department by the Division of Finance from funds generated by the surcharge imposed under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.

(b) Funds transferred to the department under this section shall be used for improvement of delivery of emergency medical services and administrative costs as described in Subsection (2)(a). Appropriations to the department for the purposes enumerated in this section shall be made from those dedicated credits.

(c) All funding for the program created by this section shall be nonlapsing.

(2) (a) The department may use the funds transferred to it under Subsection (1):

(i) to provide staff support; and

(ii) for other expenses incurred in:

(A) administration of grant funds; and

(B) other department administrative costs under this chapter.

(b) After funding staff support, administrative expenses, and trauma system development, the department and the committee shall make emergency medical services grants from the remaining funds received as dedicated credits under Subsection (1). A recipient of a grant under this Subsection (2)(b) [~~must~~] shall actively provide emergency medical services within the state.

(c) The department shall distribute not less than 25% of the funds, with the percentage being authorized by a majority vote of the committee, as per capita block grants for use specifically related to the provision of emergency medical services to nonprofit prehospital emergency medical services providers that are either licensed or designated and to emergency medical services that are the primary emergency medical services for a service area. The

department shall determine the grant amounts by prorating available funds on a per capita basis by county as described in department rule.

(d) The committee shall award the remaining funds as competitive grants for use specifically related to the provision of emergency medical services based upon rules established by the committee.

Section 154. Section **26-8a-253** is amended to read:

26-8a-253. Statewide trauma registry and quality assurance program.

(1) The department shall:

(a) establish and fund a statewide trauma registry to collect and analyze information on the incidence, severity, causes, and outcomes of trauma;

(b) establish, by rule, the data elements, the medical care providers that [~~must~~] shall report, and the time frame and format for reporting;

(c) use the data collected to:

(i) improve the availability and delivery of prehospital and hospital trauma care;

(ii) assess trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter and applicable department rules; and

(iii) regularly produce and disseminate reports to data providers, state government, and the public; and

(d) support data collection and abstraction by providing:

(i) a data collection system and technical assistance to each hospital that submits data; and

(ii) funding or, at the discretion of the department, personnel for collection and abstraction for each hospital not designated as a trauma center under the standards established pursuant to Section 26-8a-254.

(2) (a) Each hospital shall submit trauma data in accordance with rules established under Subsection (1).

(b) A hospital designated as a trauma center shall submit data as part of the ongoing quality assurance program established in Section 26-8a-252.

(3) The department shall assess:

(a) the effectiveness of the data collected pursuant to Subsection (1); and

(b) the impact of the statewide trauma system on the provision of trauma care.

(4) Data collected under this section shall be subject to [~~Title 26,~~] Chapter 3, Health Statistics.

(5) No person may be held civilly liable for having provided data to the department in accordance with this section.

Section 155. Section **26-8a-405.2** is amended to read:

26-8a-405.2. Selection of provider -- Request for competitive sealed proposal -- Public convenience and necessity.

(1) (a) A political subdivision may contract with an applicant approved under Section 26-8a-404 to provide services for the geographic service area that is approved by the department in accordance with Subsection (2), if:

(i) the political subdivision complies with the provisions of this section and Section 26-8a-405.3 if the contract is for 911 ambulance or paramedic services; or

(ii) the political subdivision complies with Sections 26-8a-405.3 and 26-8a-405.4, if the contract is for non-911 services.

(b) (i) The provisions of this section and Sections 26-8a-405.1, 26-8a-405.3, and 26-8a-405.4 do not require a political subdivision to issue a request for proposal for ambulance or paramedic services or non-911 services.

(ii) If a political subdivision does not contract with an applicant in accordance with this section and Section 26-8a-405.3, the provisions of Sections 26-8a-406 through 26-8a-409 apply to the issuance of a license for ambulance or paramedic services in the geographic service area that is within the boundaries of the political subdivision.

(iii) If a political subdivision does not contract with an applicant in accordance with this section, Section 26-8a-405.3 and Section 26-8a-405.4, a license for the non-911 services in the geographic service area that is within the boundaries of the political subdivision may be issued:

(A) under the public convenience and necessity provisions of Sections 26-8a-406 through 26-8a-409; or

(B) by a request for proposal issued by the department under Section 26-8a-405.5.

(c) (i) For purposes of this Subsection (1)(c):

(A) "Fire district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, that:

(I) is located in a county of the first or second class; and

(II) provides fire protection, paramedic, and emergency services.

(B) "Participating municipality" means a city or town whose area is partly or entirely included within a county service area or fire district.

(C) "Participating county" means a county whose unincorporated area is partly or entirely included within a fire district.

(ii) A participating municipality or participating county may as provided in this section and Section 26-8a-405.3, contract with a provider for 911 ambulance or paramedic service.

(iii) If the participating municipality or participating county contracts with a provider for services under this section and Section 26-8a-405.3:

(A) the fire district is not obligated to provide the services that are included in the contract between the participating municipality or the participating county and the provider;

(B) the fire district may impose taxes and obligations within the fire district in the same manner as if the participating municipality or participating county were receiving all services offered by the fire district; and

(C) the participating municipality's and participating county's obligations to the fire district are not diminished.

(2) (a) The political subdivision shall submit the request for proposal and the exclusive geographic service area to be included in a request for proposal issued under Subsections (1)(a)(i) or (ii) to the department for approval prior to issuing the request for proposal. The department shall approve the request for proposal and the exclusive geographic service area:

(i) unless the geographic service area creates an orphaned area; and

(ii) in accordance with Subsections (2)(b) and (c).

(b) The exclusive geographic service area may:

(i) include the entire geographic service area that is within the political subdivision's boundaries;

(ii) include islands within or adjacent to other peripheral areas not included in the political subdivision that governs the geographic service area; or

(iii) exclude portions of the geographic service area within the political subdivision's boundaries if another political subdivision or licensed provider agrees to include the excluded area within their license.

(c) The proposed geographic service area for 911 ambulance or paramedic service [~~must~~] shall demonstrate that non-911 ambulance or paramedic service will be provided in the geographic service area, either by the current provider, the applicant, or some other method acceptable to the department. The department may consider the effect of the proposed geographic service area on the costs to the non-911 provider and that provider's ability to provide only non-911 services in the proposed area.

Section 156. Section **26-8a-405.3** is amended to read:

26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.

(1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited through a request for proposal and the provisions of this section.

(b) The governing body of the political subdivision shall approve the request for proposal prior to the notice of the request for proposals under Subsection (1)(c).

(c) (i) Notice of the request for proposals shall be published:

(A) at least once a week for three consecutive weeks in a newspaper of general circulation published in the county; or

(B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days in at least five public places in the county; and

(ii) in accordance with Section 45-1-101 for at least 20 days.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the political subdivision [~~must~~] shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) A political subdivision shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the political subdivision may issue addenda to the request for proposals. An addenda to a request for proposal [~~must~~] shall be finalized and posted by the political subdivision at least 45 days [~~prior to the date~~] before the day on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

(3) (a) (i) A political subdivision may select an applicant approved by the department under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the most responsible offeror as defined in Subsection 63G-6-103(24).

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the political subdivision, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision issuing the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) A political subdivision may reject all of the competitive proposals.

(4) In seeking competitive sealed proposals and awarding contracts under this section, a political subdivision:

(a) shall apply the public convenience and necessity factors listed in Subsections 26-8a-408(2) through (6);

(b) shall require the applicant responding to the proposal to disclose how the applicant will meet performance standards in the request for proposal;

(c) may not require or restrict an applicant to a certain method of meeting the performance standards, including:

(i) requiring ambulance medical personnel to also be a firefighter; or

(ii) mandating that offerors use fire stations or dispatch services of the political subdivision;

(d) shall require an applicant to submit the proposal:

(i) based on full cost accounting in accordance with generally accepted accounting principals; and

(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in compliance with the State of Utah Legal Compliance Audit Guide; and

(e) shall set forth in the request for proposal:

(i) the method for determining full cost accounting in accordance with generally accepted accounting principles, and require an applicant to submit the proposal based on such full cost accounting principles;

(ii) guidelines established to further competition and provider accountability; and

(iii) a list of the factors that will be considered by the political subdivision in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include such things as:

(A) response times;

(B) staging locations;

(C) experience;

(D) quality of care; and

(E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

(5) (a) Notwithstanding the provisions of Subsection 63G-6-104(3), the provisions of Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies, apply to the procurement process required by this section, except as provided in Subsection (5)(c).

(b) The Procurement Appeals Board created in Section 63G-6-807 shall have jurisdiction to review and determine an appeal of an offeror under this section in the same manner as provided in Section 63G-6-810.

(c) (i) An offeror may appeal the solicitation or award as provided by the political subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror may appeal under the provisions of Subsections (5)(a) and (b).

(ii) The factual determination required by Subsection 63G-6-813(1) shall be based on whether the solicitation or award was made in accordance with the procedures set forth in this section and Section 26-8a-405.2.

(d) The determination of an issue of fact by the appeals board shall be final and conclusive unless arbitrary and capricious or clearly erroneous as provided in Section 63G-6-813.

Section 157. Section **26-8a-405.5** is amended to read:

26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.

(1) (a) The department shall issue a request for proposal for non-911 services in a geographic service area if the department receives a request from a political subdivision under Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

(b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be solicited through a request for proposal and the provisions of this section.

(c) (i) Notice of the request for proposals shall be published:

(A) at least once a week for three consecutive weeks in a newspaper of general circulation published in the county; or

(B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days in at least five public places in the county; and

(ii) in accordance with Section 45-1-101 for at least 20 days.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the department [~~must~~] shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) The department shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the department may issue addenda to the request for proposals. An addenda to a request for proposal [~~must~~] shall be finalized and posted by the department at least 45 days [~~prior to the date~~] before the day on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

(3) (a) (i) The department may select an applicant approved by the department under Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as defined in Subsection 63G-6-103(24).

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the public, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision responding to the request for competitive

sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) The department may reject all of the competitive proposals.

(4) In seeking competitive sealed proposals and awarding contracts under this section, the department:

(a) shall consider the public convenience and necessity factors listed in Subsections 26-8a-408(2) through (6);

(b) shall require the applicant responding to the proposal to disclose how the applicant will meet performance standards in the request for proposal;

(c) may not require or restrict an applicant to a certain method of meeting the performance standards, including:

(i) requiring ambulance medical personnel to also be a firefighter; or

(ii) mandating that offerors use fire stations or dispatch services of the political subdivision;

(d) shall require an applicant to submit the proposal:

(i) based on full cost accounting in accordance with generally accepted accounting principals; and

(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in compliance with the State of Utah Legal Compliance Audit Guide; and

(e) shall set forth in the request for proposal:

(i) the method for determining full cost accounting in accordance with generally accepted accounting principles, and require an applicant to submit the proposal based on such full cost accounting principles;

(ii) guidelines established to further competition and provider accountability; and

(iii) a list of the factors that will be considered by the department in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include such things as:

(A) response times;

(B) staging locations;

(C) experience;

(D) quality of care; and

(E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

(5) A license issued under this section:

(a) is for the exclusive geographic service area approved by the department;

(b) is valid for four years;

(c) is not subject to a request for license from another applicant under the provisions of Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license is revoked under Section 26-8a-504;

(d) is subject to supervision by the department under Sections 26-8a-503 and 26-8a-504; and

(e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections 26-8a-406 through 26-8a-409.

Section 158. Section **26-8a-406** is amended to read:

26-8a-406. Ground ambulance and paramedic licenses -- Parties.

(1) When an applicant approved under Section 26-8a-404 seeks licensure under the provisions of Sections 26-8a-406 through 26-8a-409, the department shall:

(a) issue a notice of agency action to the applicant to commence an informal administrative proceeding;

(b) provide notice of the application to all interested parties; and

(c) publish notice of the application, at the applicant's expense:

(i) once a week for four consecutive weeks, in a newspaper of general circulation in the geographic service area that is the subject of the application; and

(ii) in accordance with Section 45-1-101 for four weeks.

(2) An interested party has 30 days to object to an application.

(3) If an interested party objects, the presiding officer [~~must~~] shall join the interested

party as an indispensable party to the proceeding.

(4) The department may join the proceeding as a party to represent the public interest.

(5) Others who may be affected by the grant of a license to the applicant may join the proceeding, if the presiding officer determines that they meet the requirement of legal standing.

Section 159. Section **26-8a-408** is amended to read:

26-8a-408. Criteria for determining public convenience and necessity.

(1) The criteria for determining public convenience and necessity is set forth in Subsections (2) through (6).

(2) Access to emergency medical services [~~must~~] shall be maintained or improved. The officer shall consider the impact on existing services, including the impact on response times, call volumes, populations and exclusive geographic service areas served, and the ability of surrounding licensed providers to service their exclusive geographic service areas. The issuance or amendment of a license may not create an orphaned area.

(3) The quality of service in the area [~~must~~] shall be maintained or improved. The officer shall consider the:

(a) staffing and equipment standards of the current licensed provider and the applicant;

(b) training and certification levels of the current licensed provider's staff and the applicant's staff;

(c) continuing medical education provided by the current licensed provider and the applicant;

(d) levels of care as defined by department rule;

(e) plan of medical control; and

(f) the negative or beneficial impact on the regional emergency medical service system to provide service to the public.

(4) The cost to the public [~~must~~] shall be justified. The officer [~~must~~] shall consider:

(a) the financial solvency of the applicant;

(b) the applicant's ability to provide services within the rates established under Section 26-8a-403;

(c) the applicant's ability to comply with cost reporting requirements;

(d) the cost efficiency of the applicant; and

(e) the cost effect of the application on the public, interested parties, and the emergency medical services system.

(5) Local desires concerning cost, quality, and access [~~must~~] shall be considered. The officer shall assess and consider:

(a) the existing provider's record of providing services and the applicant's record and ability to provide similar or improved services;

(b) locally established emergency medical services goals, including those established in Subsection (7);

(c) comment by local governments on the applicant's business and operations plans;

(d) comment by interested parties that are providers on the impact of the application on the parties' ability to provide emergency medical services;

(e) comment by interested parties that are local governments on the impact of the application on the citizens it represents; and

(f) public comment on any aspect of the application or proposed license.

(6) Other related criteria:

(a) the officer considers necessary; or

(b) established by department rule.

(7) The role of local governments in the licensing of ground ambulance and paramedic providers that serve areas also served by the local governments is important. The Legislature strongly encourages local governments to establish cost, quality, and access goals for the ground ambulance and paramedic services that serve their areas.

(8) In a formal adjudicative proceeding, the applicant bears the burden of establishing that public convenience and necessity require the approval of the application for all or part of the exclusive geographic service area requested.

Section 160. Section **26-8a-410** is amended to read:

26-8a-410. Local approvals.

(1) Licensed ambulance providers and paramedic providers [~~must~~] shall meet all local zoning and business licensing standards generally applicable to businesses operating within the jurisdiction.

(2) Publicly subsidized providers [~~must~~] shall demonstrate approval of the taxing authority that will provide the subsidy.

(3) A publicly operated service [~~must~~] shall demonstrate that the governing body has approved the provision of services to the entire exclusive geographic service area that is the subject of the license, including those areas that may lie outside the territorial or jurisdictional boundaries of the governing body.

Section 161. Section **26-8a-413** is amended to read:

26-8a-413. License renewals.

(1) A licensed provider desiring to renew its license [~~must~~] shall meet the renewal requirements established by department rule.

(2) The department shall issue a renewal license for a ground ambulance provider or a paramedic provider upon the licensee's application for a renewal and without a public hearing if there has been:

(a) no change in controlling interest in the ownership of the licensee as defined in Section 26-8a-415;

(b) no serious, substantiated public complaints filed with the department against the licensee during the term of the previous license;

(c) no material or substantial change in the basis upon which the license was originally granted;

(d) no reasoned objection from the committee or the department; and

(e) if the applicant was licensed under the provisions of Sections 26-8a-406 through 26-8a-409, no conflicting license application.

(3) (a) (i) The provisions of this Subsection (3) apply to a provider licensed under the provisions of Sections 26-8a-405.1 and 26-8a-405.2.

(ii) A provider may renew its license if the provisions of Subsections (1), (2)(a)

through (d), and this Subsection (3) are met.

(b) (i) The department shall issue a renewal license to a provider upon the provider's application for renewal for one additional four-year term if the political subdivision certifies to the department that the provider has met all of the specifications of the original bid.

(ii) If the political subdivision does not certify to the department that the provider has met all of the specifications of the original bid, the department may not issue a renewal license and the political subdivision [~~must~~] shall enter into a public bid process under Sections 26-8a-405.1 and 26-8a-405.2.

(c) (i) The department shall issue an additional renewal license to a provider who has already been issued a one-time renewal license under the provisions of Subsection (3)(b)(i) if the department and the political subdivision do not receive, prior to the expiration of the provider's license, written notice from an approved applicant informing the political subdivision of the approved applicant's desire to submit a bid for ambulance or paramedic service.

(ii) If the department and the political subdivision receive the notice in accordance with Subsection (3)(c)(i), the department may not issue a renewal license and the political subdivision [~~must~~] shall enter into a public bid process under Sections 26-8a-405.1 and 26-8a-405.2.

(4) The department shall issue a renewal license for an air ambulance provider upon the licensee's application for renewal and completion of the renewal requirements established by department rule.

Section 162. Section **26-10b-102** is amended to read:

26-10b-102. Department to award grants and contracts -- Applications.

(1) (a) Within appropriations specified by the Legislature for this purpose, the department may make grants to public and nonprofit entities for the cost of operation of providing primary health care services to medically underserved populations.

(b) The department may, as funding permits, contract with community based organizations for the purpose of developing culturally and linguistically appropriate programs

and services for low income and medically underserved populations through a pilot program to accomplish one or more of the following:

(i) to educate individuals:

(A) to use private and public health care coverage programs, products, services, and resources in a timely, effective, and responsible manner;

(B) to make prudent use of private and public health care resources;

(C) to pursue preventive health care, health screenings, and disease management; and

(D) to locate health care programs and services;

(ii) to assist individuals to develop:

(A) personal health management;

(B) self-sufficiency in daily care; and

(C) life and disease management skills;

(iii) to support translation of health materials and information;

(iv) to facilitate an individual's access to primary care services and providers, including mental health services; and

(v) to measure and report empirical results of the pilot project.

(2) (a) Grants by the department shall be awarded based on:

(i) applications submitted to the department in the manner and form prescribed by the department; and

(ii) the criteria established in Section 26-10b-103.

(b) The application for a grant under Subsection (2)(a) shall contain:

(i) a requested award amount;

(ii) a budget; and

(iii) a narrative plan of the manner in which the applicant intends to provide the primary health care services described in Subsection 26-10b-101(7).

(c) A contract bid for a service under Subsection (1)(b):

(i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;

(ii) [~~must~~] shall include the information described in Section 26-10b-103; and

(iii) is subject to Subsection (3) of this section.

(3) (a) An applicant under this chapter [~~must~~] shall demonstrate to the department that the applicant will not deny services to a person because of the person's inability to pay for the services.

(b) Subsection (3)(a) does not preclude an applicant from seeking payment from the person receiving services, a third party, or a government agency if:

(i) the applicant is authorized to charge for the services; and

(ii) the person, third party, or government agency is under legal obligation to pay the charges.

(4) The department shall maximize the use of federal matching funds received for services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

Section 163. Section **26-15-8** is amended to read:

26-15-8. Periodic evaluation of local health sanitation programs -- Minimum statewide enforcement standards -- Technical assistance.

(1) The department shall periodically evaluate the sanitation programs of local health departments to determine the levels of sanitation being maintained throughout the state.

(2) (a) The department shall ensure that each local health department's enforcement of the minimum rules of sanitation adopted under Section 26-15-2 for restaurants and other places where food or drink is handled meets or exceeds minimum statewide enforcement standards established by the department by administrative rule.

(b) Administrative rules adopted under Subsection (2)(a) shall include at least:

(i) the minimum number of periodic on-site inspections that [~~must~~] shall be conducted by each local health department;

(ii) criteria for conducting additional inspections; and

(iii) standardized methods to be used by local health departments to assess compliance with the minimum rules of sanitation adopted under Section 26-15-2.

(c) The department shall help local health departments comply with the minimum statewide enforcement standards adopted under this Subsection (2) by providing technical

assistance.

Section 164. Section **26-18-3** is amended to read:

26-18-3. Administration of Medicaid program by department -- Reporting to the Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility standards -- Internal audits -- Studies -- Health opportunity accounts.

(1) The department shall be the single state agency responsible for the administration of the Medicaid program in connection with the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act.

(2) (a) The department shall implement the Medicaid program through administrative rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal regulations.

(b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program:

(i) the standards used by the department for determining eligibility for Medicaid services;

(ii) the services and benefits to be covered by the Medicaid program; and

(iii) reimbursement methodologies for providers under the Medicaid program.

(3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health and Human Services Appropriations Subcommittee when the department:

(i) implements a change in the Medicaid State Plan;

(ii) initiates a new Medicaid waiver;

(iii) initiates an amendment to an existing Medicaid waiver;

(iv) applies for an extension of an application for a waiver or an existing Medicaid waiver; or

(v) initiates a rate change that requires public notice under state or federal law.

(b) The report required by Subsection (3)(a) shall:

(i) be submitted to the Health and Human Services Appropriations Subcommittee prior to the department implementing the proposed change; and

(ii) include:

(A) a description of the department's current practice or policy that the department is proposing to change;

(B) an explanation of why the department is proposing the change;

(C) the proposed change in services or reimbursement, including a description of the effect of the change;

(D) the effect of an increase or decrease in services or benefits on individuals and families;

(E) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(F) the fiscal impact of the proposed change, including:

(I) the effect of the proposed change on current or future appropriations from the Legislature to the department;

(II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;

(III) any cost shifting or cost savings within the department's budget that may result from the proposed change; and

(IV) identification of the funds that will be used for the proposed change, including any transfer of funds within the department's budget.

(4) (a) The Department of Human Services shall report to the Legislative Health and Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance with Subsection (4)(b).

(b) The report required by Subsection (4)(a) shall include:

(i) changes made by the division or the department beginning July 1, 2010 that effect the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid services or funding, that relate to care for children and youth in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services;

(ii) the history and impact of the changes under Subsection (4)(b)(I);

(iii) the Department of Human Service's plans for addressing the impact of the changes under Subsection (4)(b)(i); and

(iv) ways to consolidate administrative functions within the Department of Human Services, the Department of Health, the Division of Child and Family Services, and the Division of Juvenile Justice Services to more efficiently meet the needs of children and youth with mental health and substance disorder treatment needs.

(5) Any rules adopted by the department under Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63G-3-502.

(6) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including:

(a) the determination of the eligibility of individuals for the program;

(b) recovery of overpayments; and

(c) consistent with Section 26-20-13, and to the extent permitted by law and quality control services, enforcement of fraud and abuse laws.

(7) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided that sanctions imposed administratively may not extend beyond:

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

(c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

(8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to be used by the division in accordance with the requirements of Section 1919 of Title XIX of the federal Social Security Act.

(9) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle

designated by the applicant or recipient.

(b) Before Subsection (9)(a) may be applied:

(i) the federal government [~~must~~] shall:

(A) determine that Subsection (9)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

(C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and

(ii) the department [~~must~~] shall determine that Subsection (9)(a) can be implemented within existing funding.

(10) (a) For purposes of this Subsection (10):

(i) "aged, blind, or disabled" shall be defined by administrative rule; and

(ii) "spend down" means an amount of income in excess of the allowable income standard that [~~must~~] shall be paid in cash to the department or incurred through the medical services not paid by Medicaid.

(b) In determining whether an applicant or recipient who is aged, blind, or disabled is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:

(i) the allowable income standard for eligibility for services or benefits; and

(ii) the allowable income standard for eligibility as a result of spend down.

(11) The department shall conduct internal audits of the Medicaid program, in proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

(12) In order to determine the feasibility of contracting for direct Medicaid providers for primary care services, the department shall:

(a) issue a request for information for direct contracting for primary services that shall provide that a provider shall exclusively serve all Medicaid clients:

(i) in a geographic area;

(ii) for a defined range of primary care services; and

(iii) for a predetermined total contracted amount; and

(b) by February 1, 2011, report to the Health and Human Services Appropriations Subcommittee on the response to the request for information under Subsection (12)(a).

(13) (a) By December 31, 2010, the department shall:

(i) determine the feasibility of implementing a three year patient-centered medical home demonstration project in an area of the state using existing budget funds; and

(ii) report the department's findings and recommendations under Subsection (13)(a)(i) to the Health and Human Services Appropriations Subcommittee.

(b) If the department determines that the medical home demonstration project described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations Subcommittee recommends that the demonstration project be implemented, the department shall:

(i) implement the demonstration project; and

(ii) by December 1, 2012, make recommendations to the Health and Human Services Appropriations Subcommittee regarding the:

(A) continuation of the demonstration project;

(B) expansion of the demonstration project to other areas of the state; and

(C) cost savings incurred by the implementation of the demonstration project.

(14) (a) The department may apply for and, if approved, implement a demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

(b) A health opportunity account established under Subsection (14)(a) shall be an alternative to the existing benefits received by an individual eligible to receive Medicaid under this chapter.

(c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

Section 165. Section **26-18-4** is amended to read:

26-18-4. Department standards for eligibility under Medicaid -- Funds for abortions.

(1) The department may develop standards and administer policies relating to

eligibility under the Medicaid program as long as they are consistent with Subsection 26-18-3(8). An applicant receiving Medicaid assistance may be limited to particular types of care or services or to payment of part or all costs of care determined to be medically necessary.

(2) The department [~~shall not~~] may not provide any funds for medical, hospital, or other medical expenditures or medical services to otherwise eligible persons where the purpose of the assistance is to perform an abortion, unless the life of the mother would be endangered if an abortion were not performed.

(3) Any employee of the department who authorizes payment for an abortion contrary to the provisions of this section is guilty of a class B misdemeanor and subject to forfeiture of office.

(4) Any person or organization that, under the guise of other medical treatment, provides an abortion under auspices of the Medicaid program is guilty of a third degree felony and subject to forfeiture of license to practice medicine or authority to provide medical services and treatment.

Section 166. Section **26-18-5** is amended to read:

26-18-5. Contracts for provision of medical services -- Federal provisions modifying department rules -- Compliance with Social Security Act.

(1) The department may contract with other public or private agencies to purchase or provide medical services in connection with the programs of the division. Where these programs are used by other state agencies, contracts shall provide that other state agencies transfer the state matching funds to the department in amounts sufficient to satisfy needs of the specified program.

(2) All contracts for the provision or purchase of medical services shall be established on the basis of the state's fiscal year and shall remain uniform during the fiscal year insofar as possible. Contract terms shall include provisions for maintenance, administration, and service costs.

(3) If a federal legislative or executive provision requires modifications or revisions in an eligibility factor established under this chapter as a condition for participation in medical

assistance, the department may modify or change its rules as necessary to qualify for participation; providing, the provisions of this section [~~shall not~~] do not apply to department rules governing abortion.

(4) The department shall comply with all pertinent requirements of the Social Security Act and all orders, rules, and regulations adopted thereunder when required as a condition of participation in benefits under the Social Security Act.

Section 167. Section **26-18-10** is amended to read:

26-18-10. Utah Medical Assistance Program -- Policies and standards.

(1) The division shall develop a medical assistance program, which shall be known as the Utah Medical Assistance Program, for low income persons who are not eligible under the state plan for Medicaid under Title XIX of the Social Security Act or Medicare under Title XVIII of that act.

(2) Persons in the custody of prisons, jails, halfway houses, and other nonmedical government institutions are not eligible for services provided under this section.

(3) The department shall develop standards and administer policies relating to eligibility requirements, consistent with Subsection 26-18-3(8), for participation in the program, and for payment of medical claims for eligible persons.

(4) The program shall be a payor of last resort. Before assistance is rendered the division shall investigate the availability of the resources of the spouse, father, mother, and adult children of the person making application.

(5) The department shall determine what medically necessary care or services are covered under the program, including duration of care, and method of payment, which may be partial or in full.

(6) The department [~~shall not~~] may not provide public assistance for medical, hospital, or other medical expenditures or medical services to otherwise eligible persons where the purpose of the assistance is for the performance of an abortion, unless the life of the mother would be endangered if an abortion were not performed.

(7) The department may establish rules to carry out the provisions of this section.

Section 168. Section **26-18-11** is amended to read:

26-18-11. Rural hospitals.

(1) For purposes of this section "rural hospital" means a hospital located outside of a standard metropolitan statistical area, as designated by the United States Bureau of the Census.

(2) For purposes of the Medicaid program and the Utah Medical Assistance Program, the Division of Health Care Financing [~~shall not~~] may not discriminate among rural hospitals on the basis of size.

Section 169. Section **26-18-501** is amended to read:

26-18-501. Definitions.

As used in this part:

(1) "Certified program" means a nursing care facility program with Medicaid certification.

(2) "Director" means the director of the Division of Health Care Financing.

(3) "Medicaid certification" means the right to Medicaid reimbursement as a provider of a nursing care facility program as established by division rule.

(4) (a) "Nursing care facility" means the following facilities licensed by the department under Chapter 21, Health Care Facility Licensing and Inspection Act:

(i) skilled nursing homes;

(ii) intermediate care facilities; and

(iii) intermediate care facilities for the mentally retarded.

(b) "Nursing care facility" does not mean a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998).

(5) "Nursing care facility program" means the personnel, licenses, services, contracts and all other requirements that [~~must~~] shall be met for a nursing care facility to be eligible for Medicaid certification under this part and division rule.

(6) "Physical facility" means the buildings or other physical structures where a nursing care facility program is operated.

(7) "Service area" means the boundaries of the distinct geographic area served by a

certified program as determined by the division in accordance with this part and division rule.

Section 170. Section **26-18-502** is amended to read:

26-18-502. Purpose -- Medicaid certification of nursing care facilities.

(1) The Legislature finds:

(a) that an oversupply of nursing care facility programs in the state adversely affects the state Medicaid program and the health of the people in the state; and

(b) it is in the best interest of the state to prohibit Medicaid certification of nursing care facility programs, except as authorized by this part.

(2) Medicaid reimbursement of nursing care facility programs is limited to:

(a) the number of nursing care facility programs with Medicaid certification as of May 4, 2004; and

(b) additional nursing care facility programs approved for Medicaid certification under the provisions of Subsection 26-18-503(5).

(3) The division [~~shall not~~] may not:

(a) except as authorized by Section 26-18-503:

(i) process initial applications for Medicaid certification or execute provider agreements with nursing care facility programs; or

(ii) reinstate Medicaid certification for a nursing care facility whose certification expired or was terminated by action of the federal or state government; or

(b) execute a Medicaid provider agreement with a certified program that moves its nursing care facility program to a different physical facility, except as authorized by Subsection 26-18-503(3).

Section 171. Section **26-18-503** is amended to read:

26-18-503. Authorization to renew, transfer, or increase Medicaid certified programs -- Reimbursement methodology.

(1) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility as long as the licensed and certified bed

capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(2) (a) The division may issue a Medicaid certification for a new nursing care facility program if a current owner of the Medicaid certified program transfers its ownership of the Medicaid certification to the new nursing care facility program and the new nursing care facility program meets all of the following conditions:

(i) the new nursing care facility program operates at the same physical facility as the previous Medicaid certified program;

(ii) the new nursing care facility program gives a written assurance to the director in accordance with Subsection (4);

(iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient; and

(iv) the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(b) A nursing care facility program that receives Medicaid certification under the provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing care facility program if the new nursing care facility program:

(i) is not owned in whole or in part by the previous nursing care facility program; or

(ii) is not a successor in interest of the previous nursing care facility program.

(3) The division may issue a Medicaid certification to a nursing care facility program that was previously a certified program but now resides in a new or renovated physical facility if the nursing care facility program meets all of the following:

(a) the nursing care facility program met all applicable requirements for Medicaid certification at the time of closure;

(b) the new or renovated physical facility is in the same county or within a five-mile radius of the original physical facility;

(c) the time between which the certified program ceased to operate in the original

facility and will begin to operate in the new physical facility is not more than three years;

(d) if Subsection (3)(c) applies, the certified program notifies the department within 90 days after ceasing operations in its original facility, of its intent to retain its Medicaid certification;

(e) the provider gives written assurance to the director in accordance with Subsection (4) that no third party has a legitimate claim to operate a certified program at the previous physical facility; and

(f) the bed capacity in the physical facility has not been expanded unless the director has approved additional beds in accordance with Subsection (5).

(4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) [~~must~~] shall give written assurances satisfactory to the director or [~~his~~] the director's designee that:

(i) no third party has a legitimate claim to operate the certified program;

(ii) the requesting entity agrees to defend and indemnify the department against any claims by a third party who may assert a right to operate the certified program; and

(iii) if a third party is found, by final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

(b) If a finding is made under the provisions of Subsection (4)(a)(iii):

(i) the certified program shall immediately surrender its Medicaid certification and comply with division rules regarding billing for Medicaid and the provision of services to Medicaid patients; and

(ii) the department shall transfer the surrendered Medicaid certification to the third party who prevailed under Subsection (4)(a)(iii).

(5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional Medicaid certification when requested by a nursing care facility or other interested party if there is insufficient bed capacity with current certified programs in a service area. A determination of insufficient bed capacity shall be based on the nursing care facility or other

interested party providing reasonable evidence of an inadequate number of beds in the county or group of counties impacted by the requested Medicaid certification based on:

(i) current demographics which demonstrate nursing care facility occupancy levels of at least 90% for all existing and proposed facilities within a prospective three-year period;

(ii) current nursing care facility occupancy levels of 90%; or

(iii) no other nursing care facility within a 35-mile radius of the nursing care facility requesting the additional certification.

(b) In addition to the requirements of Subsection (5)(a), a nursing care facility program [~~must~~] shall demonstrate by an independent analysis that the nursing care facility can financially support itself at an after tax break-even net income level based on projected occupancy levels.

(c) When making a determination to certify additional beds or an additional nursing care facility program under Subsection (5)(a):

(i) the director shall consider whether the nursing care facility will offer specialized or unique services that are underserved in a service area;

(ii) the director shall consider whether any Medicaid certified beds are subject to a claim by a previous certified program that may reopen under the provisions of Subsections (2) and (3); and

(iii) the director may consider how to add additional capacity to the long-term care delivery system to best meet the needs of Medicaid recipients.

(6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility property reimbursement methodology to:

(a) beginning July 1, 2008, only pay that portion of the property component of rates, representing actual bed usage by Medicaid clients as a percentage of the greater of:

(i) actual occupancy; or

(ii) (A) for a nursing care facility other than a facility described in Subsection (6)(a)(ii)(B), 85% of total bed capacity; or

(B) for a rural nursing care facility, 65% of total bed capacity; and

(b) beginning July 1, 2008, not allow for increases in reimbursement for property values without major renovation or replacement projects as defined by the department by rule.

Section 172. Section **26-18-505** is amended to read:

26-18-505. Authorization to sell or transfer licensed Medicaid beds -- Duties of transferor -- Duties of transferee -- Duties of division.

(1) This section provides a method to transfer the license for a Medicaid bed from one nursing care facility program to another entity that is in addition to the authorization to transfer under Section 26-18-503.

(2) (a) A nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds in accordance with Subsection (2)(b) if:

(i) at the time of the transfer, and with respect to the license for the Medicaid bed that will be transferred, the nursing care facility program that will transfer the Medicaid license meets all applicable regulations for Medicaid certification;

(ii) 30 days prior to the transfer, the nursing care facility program gives a written assurance to the director and to the transferee in accordance with Subsection 26-18-503(4); and

(iii) 30 days prior to the transfer, the nursing care facility program that will transfer the license for a Medicaid bed notifies the division in writing of:

(A) the number of bed licenses that will be transferred;

(B) the date of the transfer; and

(C) the identity and location of the entity receiving the transferred licenses.

(b) A nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds to:

(i) a nursing care facility program that has the same owner or successor in interest of the same owner;

(ii) a nursing care facility program that has a different owner; or

(iii) an entity that intends to establish a nursing care facility program.

(3) An entity that receives or purchases a license for a Medicaid bed:

(a) may receive a license for a Medicaid bed from more than one nursing care facility program;

(b) within 14 days of seeking Medicaid certification of beds in the nursing care facility program, give the division notice of the total number of licenses for Medicaid beds that the entity received and who it received the licenses from;

(c) may only seek Medicaid certification for the number of licensed beds in the nursing care facility program equal to the total number of licenses for Medicaid beds received by the entity, multiplied by a conversion factor of .7, and rounded down to the lowest integer;

(d) does not have to demonstrate need for the Medicaid licensed beds under Subsection 26-18-503(5);

(e) [~~must~~] shall meet the standards for Medicaid certification other than those in Subsection 26-18-503(5), including personnel, services, contracts, and licensing of facilities under Chapter 21, Health Care Facility Licensing and Inspection Act; and

(f) [~~must~~] shall obtain Medicaid certification for the licensed Medicaid beds within three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).

(4) The conversion formula required by Subsection (3)(c) shall be calculated:

(a) when the nursing care facility program applies to the Department for Medicaid certification of the licensed beds; and

(b) based on the total number of licenses for Medicaid beds transferred to the nursing care facility at the time of the request for Medicaid certification.

(5) (a) When the division receives notice of a transfer of a license for a Medicaid bed under Subsection (2)(a)(iii)(A), the division shall reduce the number of licenses for Medicaid beds at the transferring nursing care facility:

(i) equal to the number of licenses transferred; and

(ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).

(b) For purposes of Section 26-18-502, the division shall approve Medicaid certification for the receiving entity:

(i) in accordance with the formula established in Subsection (3)(c); and

(ii) if:

(A) the nursing care facility seeks Medicaid certification for the transferred licenses within the time limit required by Subsection (3)(f); and

(B) the nursing care facility program meets other requirements for Medicaid certification under Subsection (3)(e).

(c) A license for a Medicaid bed may not be approved for Medicaid certification without meeting the requirements of Sections 26-18-502 and 26-18-503 if:

(i) the license for a Medicaid bed is transferred under this section but the receiving entity does not obtain Medicaid certification for the licensed bed within the time required by Subsection (3)(f); or

(ii) the license for a Medicaid bed is transferred under this section but the license is no longer eligible for Medicaid certification as a result of the conversion factor established in Subsection (3)(c).

Section 173. Section **26-19-7** is amended to read:

26-19-7. Notice of claim by recipient -- Department response -- Conditions for proceeding -- Collection agreements -- Department's right to intervene -- Department's interests protected -- Remitting funds -- Disbursements -- Liability and penalty for noncompliance.

(1) (a) A recipient may not file a claim, commence an action, or settle, compromise, release, or waive a claim against a third party for recovery of medical costs for an injury, disease, or disability for which the department has provided or has become obligated to provide medical assistance, without the department's written consent as provided in Subsection (2)(b) or (4).

(b) For purposes of Subsection (1)(a), consent may be obtained if:

(i) a recipient who files a claim, or commences an action against a third party notifies the department in accordance with Subsection (1)(d) within 10 days of making [~~his~~] the claim or commencing an action; or

(ii) an attorney, who has been retained by the recipient to file a claim, or commence an

action against a third party, notifies the department in accordance with Subsection (1)(d) of the recipient's claim:

(A) within 30 days after being retained by the recipient for that purpose; or

(B) within 30 days from the date the attorney either knew or should have known that the recipient received medical assistance from the department.

(c) Service of the notice of claim to the department shall be made by certified mail, personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure, to the director of the Office of Recovery Services.

(d) The notice of claim shall include the following information:

(i) the name of the recipient;

(ii) the recipient's Social Security number;

(iii) the recipient's date of birth;

(iv) the name of the recipient's attorney if applicable;

(v) the name or names of individuals or entities against whom the recipient is making the claim, if known;

(vi) the name of the third party's insurance carrier, if known;

(vii) the date of the incident giving rise to the claim; and

(viii) a short statement identifying the nature of the recipient's claim.

(2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1), the department shall acknowledge receipt of the notice of the claim to the recipient or the recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the following:

(i) if the department has a claim or lien pursuant to Section 26-19-5 or has become obligated to provide medical assistance; and

(ii) whether the department is denying or granting written consent in accordance with Subsection (1)(a).

(b) The department shall provide the recipient's attorney the opportunity to enter into a collection agreement with the department, with the recipient's consent, unless:

(i) the department, prior to the receipt of the notice of the recipient's claim pursuant to Subsection (1), filed a written claim with the third party, the third party agreed to make payment to the department before the date the department received notice of the recipient's claim, and the agreement is documented in the department's record; or

(ii) there has been a failure by the recipient's attorney to comply with any provision of this section by:

(A) failing to comply with the notice provisions of this section;

(B) failing or refusing to enter into a collection agreement;

(C) failing to comply with the terms of a collection agreement with the department; or

(D) failing to disburse funds owed to the state in accordance with this section.

(c) (i) The collection agreement shall be:

(A) consistent with this section and the attorney's obligation to represent the recipient and represent the state's claim; and

(B) state the terms under which the interests of the department may be represented in an action commenced by the recipient.

(ii) If the recipient's attorney enters into a written collection agreement with the department, or includes the department's claim in the recipient's claim or action pursuant to Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's total recovery and shall pay a proportionate share of the litigation expenses directly related to the action.

(d) The department is not required to enter into a collection agreement with the recipient's attorney for collection of personal injury protection under Subsection 31A-22-302(2).

(3) (a) If the department receives notice pursuant to Subsection (1), and notifies the recipient and the recipient's attorney that the department will not enter into a collection agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or action against the third party if the recipient excludes from the claim:

(i) any medical expenses paid by the department; or

(ii) any medical costs for which the department is obligated to provide medical assistance.

(b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall provide written notice to the third party of the exclusion of the department's claim for expenses under Subsection (3)(a)(i) or (ii).

(4) If the department receives notice pursuant to Subsection (1), and does not respond within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's attorney:

(a) may proceed with the recipient's claim or action against the third party;

(b) may include the state's claim in the recipient's claim or action; and

(c) may not negotiate, compromise, settle, or waive the department's claim without the department's consent.

(5) The department has an unconditional right to intervene in an action commenced by a recipient against a third party for the purpose of recovering medical costs for which the department has provided or has become obligated to provide medical assistance.

(6) (a) If the recipient proceeds without complying with the provisions of this section, the department is not bound by any decision, judgment, agreement, settlement, or compromise rendered or made on the claim or in the action.

(b) The department may recover in full from the recipient or any party to which the proceeds were made payable all medical assistance which it has provided and retains its right to commence an independent action against the third party, subject to Subsection 26-19-5(3).

(7) Any amounts assigned to and recoverable by the department pursuant to Sections 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than five business days after receipt.

(8) (a) Any amounts assigned to and recoverable by the department pursuant to Sections 26-19-4.5 and 26-19-5 collected directly by the recipient's attorney [~~must~~] shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later

than 30 days after the funds are placed in the attorney's trust account.

(b) The date by which the funds [~~must~~] shall be remitted to the department may be modified based on agreement between the department and the recipient's attorney.

(c) The department's consent to another date for remittance may not be unreasonably withheld.

(d) If the funds are received by the recipient's attorney, no disbursements shall be made to the recipient or the recipient's attorney until the department's claim has been paid.

(9) A recipient or recipient's attorney who knowingly and intentionally fails to comply with this section is liable to the department for:

(a) the amount of the department's claim or lien pursuant to Subsection (5);

(b) a penalty equal to 10% of the amount of the department's claim; and

(c) [~~attorney's~~] attorney fees and litigation expenses related to recovering the department's claim.

Section 174. Section **26-19-8** is amended to read:

26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not to limit time allowed for recovery.

(1) (a) Subject to Subsection (6), action commenced by the department under this chapter against a health insurance entity [~~must~~] shall be commenced within:

(i) subject to Subsection (7), six years after the day on which the department submits the claim for recovery or payment for the health care item or service upon which the action is based; or

(ii) six months after the date of the last payment for medical assistance, whichever is later.

(b) An action against any other third party, the recipient, or anyone to whom the proceeds are payable [~~must~~] shall be commenced within:

(i) four years after the date of the injury or onset of the illness; or

(ii) six months after the date of the last payment for medical assistance, whichever is later.

(2) The death of the recipient does not abate any right of action established by this chapter.

(3) (a) No insurance policy issued or renewed after June 1, 1981, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than 24 months from the date the provider furnishes services or goods to the recipient.

(b) No insurance policy issued or renewed after April 30, 2007, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than that described in Subsection (1)(a).

(4) The provisions of this section do not apply to Section 26-19-13.5.

(5) The provisions of this section supercede any other sections regarding the time limit in which an action [~~must~~] shall be commenced, including Section 75-7-509.

(6) (a) Subsection (1)(a) extends the statute of limitations on a cause of action described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.

(b) Subsection (1)(a) does not revive a cause of action that was time-barred on or before April 30, 2007.

(7) An action described in Subsection (1)(a) may not be commenced if the claim for recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after the day on which the health care item or service upon which the claim is based was provided.

Section 175. Section **26-20-3** is amended to read:

26-20-3. False statement or representation relating to medical benefits.

(1) A person [~~shall not~~] may not make or cause to be made a false statement or false representation of a material fact in an application for medical benefits.

(2) A person [~~shall not~~] may not make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medical benefit.

(3) A person, who having knowledge of the occurrence of an event affecting [~~his~~] the person's initial or continued right to receive a medical benefit or the initial or continued right of any other person on whose behalf [~~he~~] the person has applied for or is receiving a medical

benefit, [~~shall not~~] may not conceal or fail to disclose that event with intent to obtain a medical benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

Section 176. Section **26-20-6** is amended to read:

26-20-6. Conspiracy to defraud prohibited.

A person [~~shall not~~] may not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for a medical benefit.

Section 177. Section **26-20-8** is amended to read:

26-20-8. Knowledge of past acts not necessary to establish fact that false statement or representation knowingly made.

In prosecution under this chapter, it [~~shall not be~~] is not necessary to show that the person had knowledge of similar acts having been performed in the past on the part of persons acting on his behalf nor to show that the person had actual notice that the acts by the persons acting on his behalf occurred to establish the fact that a false statement or representation was knowingly made.

Section 178. Section **26-20-9.5** is amended to read:

26-20-9.5. Civil penalties.

(1) The culpable mental state required for a civil violation of this chapter is "knowing" or "knowingly" which:

(a) means that person, with respect to information:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(b) does not require a specific intent to defraud.

(2) Any person who violates this chapter shall, in all cases, in addition to other penalties provided by law, be required to:

(a) make full and complete restitution to the state of all damages that the state sustains

because of the person's violation of this chapter;

(b) pay to the state its costs of enforcement of this chapter in that case, including [~~but not limited to~~] the cost of investigators, attorneys, and other public employees, as determined by the state; and

(c) pay to the state a civil penalty equal to:

(i) three times the amount of damages that the state sustains because of the person's violation of this chapter; and

(ii) not less than $5,000 or more than $10,000 for each claim filed or act done in violation of this chapter.

(3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as part of its judgment in both criminal and civil actions.

(4) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

Section 179. Section **26-20-12** is amended to read:

26-20-12. Violation of other laws.

(1) The provisions of this chapter are:

(a) not exclusive, and the remedies provided for in this chapter are in addition to any other remedies provided for under:

(i) any other applicable law; or

(ii) common law; and

(b) to be liberally construed and applied to:

(i) effectuate the chapter's remedial and deterrent purposes; and

(ii) serve the public interest.

(2) If any provision of this chapter or the application of this chapter to any person or circumstance is held unconstitutional:

(a) the remaining provisions of this chapter [~~shall not be~~] are not affected; and

(b) the application of this chapter to other persons or circumstances [~~shall not be~~] are not affected.

Section 180. Section **26-20-14** is amended to read:

26-20-14. Investigations -- Civil investigative demands.

(1) The attorney general may take investigative action under Subsection (2) if the attorney general has reason to believe that:

(a) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged violation of this chapter;

(b) a person is committing, has committed, or is about to commit a violation of this chapter; or

(c) it is in the public interest to conduct an investigation to ascertain whether or not a person is committing, has committed, or is about to commit a violation of this chapter.

(2) In taking investigative action, the attorney general may:

(a) require the person to file on a prescribed form a statement in writing, under oath or affirmation describing:

(i) the facts and circumstances concerning the alleged violation of this chapter; and

(ii) other information considered necessary by the attorney general;

(b) examine under oath a person in connection with the alleged violation of this chapter; and

(c) in accordance with Subsections (7) through (18), execute in writing, and serve on the person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material.

(3) The attorney general may not release or disclose information that is obtained under Subsection (2)(a) or (b), or any documentary material or other record derived from the information obtained under Subsection (2)(a) or (b), except:

(a) by court order for good cause shown;

(b) with the consent of the person who provided the information;

(c) to an employee of the attorney general or the department;

(d) to an agency of this state, the United States, or another state;

(e) to a special assistant attorney general representing the state in a civil action;

(f) to a political subdivision of this state; or

(g) to a person authorized by the attorney general to receive the information.

(4) The attorney general may use documentary material derived from information obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to submit to an examination as required by Subsection (2)(b), the attorney general may file in district court a complaint for an order to compel the person to within a period stated by court order:

(i) file the statement required by Subsection (2)(a); or

(ii) submit to the examination required by Subsection (2)(b).

(b) Failure to comply with an order entered under Subsection (5)(a) is punishable as contempt.

(6) A civil investigative demand [~~must~~] shall:

(a) state the rule or statute under which the alleged violation of this chapter is being investigated;

(b) describe the:

(i) general subject matter of the investigation; and

(ii) class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(c) designate a date within which the documentary material is to be produced; and

(d) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(7) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Utah Rules of Civil Procedure.

(8) Service of a civil investigative demand may be made by:

(a) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of

process on behalf of that person;

(b) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(c) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served:

(i) at the person's principal place of business in this state; or

(ii) if the person has no place of business in this state, to the person's principal office or place of business.

(9) Documentary material demanded in a civil investigative demand shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(10) The attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to a civil investigative demand except:

(a) by court order for good cause shown;

(b) with the consent of the person who produced the information;

(c) to an employee of the attorney general or the department;

(d) to an agency of this state, the United States, or another state;

(e) to a special assistant attorney general representing the state in a civil action;

(f) to a political subdivision of this state; or

(g) to a person authorized by the attorney general to receive the information.

(11) (a) With respect to documentary material obtained pursuant to a civil investigative demand, the attorney general shall prescribe reasonable terms and conditions allowing such documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person.

(b) The attorney general may use such documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(12) A person may file a complaint, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be filed in district court [~~and must be filed~~] before the earlier of:

(a) the return date specified in the demand; or

(b) the 20th day after the date the demand is served.

(13) Except as provided by court order, a person who has been served with a civil investigative demand shall comply with the terms of the demand.

(14) (a) A person who has committed a violation of this chapter in relation to the Medicaid program in this state or to any other medical benefit program administered by the state has submitted to the jurisdiction of this state.

(b) Personal service of a civil investigative demand under this section may be made on the person described in Subsection (14)(a) outside of this state.

(15) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(16) The attorney general may file a complaint in district court for an order to enforce the civil investigative demand if:

(a) a person fails to comply with a civil investigative demand; or

(b) copying and reproduction of the documentary material demanded:

(i) cannot be satisfactorily accomplished; and

(ii) the person refuses to surrender the documentary material.

(17) If a complaint is filed under Subsection (16), the court may determine the matter presented and may enter an order to enforce the civil investigative demand.

(18) Failure to comply with a final order entered under Subsection (17) is punishable by contempt.

Section 181. Section **26-21-9** is amended to read:

26-21-9. Application for license -- Information required -- Public records.

(1) An application for license shall be made to the department in a form prescribed by

the department. The application and other documentation requested by the department as part of the application process shall require such information as the committee determines necessary to ensure compliance with established rules.

(2) Information received by the department in reports and inspections shall be public records, except the information [~~shall not~~] may not be disclosed if it directly or indirectly identifies any individual other than the owner or operator of a health facility (unless disclosure is required by law) or if its disclosure would otherwise constitute an unwarranted invasion of personal privacy.

(3) Information received by the department from a health care facility, pertaining to that facility's accreditation by a voluntary accrediting organization, shall be private data except for a summary prepared by the department related to licensure standards.

Section 182. Section **26-21-9.5** is amended to read:

26-21-9.5. Criminal background check and Licensing Information System check.

(1) For purposes of this section:

(a) "Covered employer" means an individual who:

(i) is not a covered health care facility;

(ii) is not a licensed business within the state; and

(iii) is hiring an individual to provide services to an elderly or disabled person in the home of the elderly or disabled person.

(b) "Covered health care facility" means:

(i) home health care agencies;

(ii) hospices;

(iii) nursing care facilities;

(iv) assisted-living facilities;

(v) small health care facilities; and

(vi) end stage renal disease facilities.

(c) "Covered person" includes:

(i) the following people who provide direct patient care:

(A) employees;

(B) volunteers; and

(C) people under contract with the covered health care facility; and

(ii) for residential settings, any individual residing in the home where the assisted living or small health care program is to be licensed who:

(A) is 18 years of age or older; or

(B) is a child between the age of 12 and 17 years of age; however, the identifying information required for a child between the age of 12 and 17 does not include fingerprints.

(2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered health care facility at the time of initial application for a license and license renewal shall:

(a) submit the name and other identifying information of each covered person at the covered facility who:

(i) provides direct care to a patient; and

(ii) has been the subject of a criminal background check within the preceding three-year period by a public or private entity recognized by the department; and

(b) submit the name and other identifying information, which may include fingerprints, of each covered person at the covered facility who has not been the subject of a criminal background check in accordance with Subsection (2)(a)(ii).

(3) (a) The department shall forward the information received under Subsection (2)(b) or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of Public Safety for processing to determine whether the individual has been convicted of any crime.

(b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division. The individual or licensee is responsible for the cost of the fingerprinting and national criminal history check.

(4) The department may determine whether:

(a) an individual whose name and other identifying information has been submitted pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing Information System described in Section 62A-4a-1006 or has a substantiated finding by a court of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a possible perpetrator of child abuse or neglect is relevant to the employment activities of that individual;

(b) an individual whose name and other identifying information has been submitted pursuant to Subsection (2) or (6)(b) and who provides direct care to disabled or elder adults, or who is residing in a residential home that is a facility licensed to provide direct care to disabled or elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or elder adult by accessing in accordance with Subsection (5) the database created in Section 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to the employment activities or residence of that person; or

(c) an individual whose name or other identifying information has been submitted pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor if:

(i) the individual is under the age of 28 years; or

(ii) the individual is over the age of 28 and has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor.

(5) (a) The department shall:

(i) designate persons within the department to access:

(A) the Licensing Information System described in Section 62A-4a-1006;

(B) court records under Subsection 78A-6-323(6);

(C) the database described in Subsection (4)(b); and

(D) juvenile court records as permitted by Subsection (4)(c); and

(ii) adopt measures to:

(A) protect the security of the Licensing Information System, the court records, and the database; and

(B) strictly limit access to the Licensing Information System, the court records, and the database to those designated under Subsection (5)(a)(i).

(b) Those designated under Subsection (5)(a)(i) shall receive training from the Department of Human Services with respect to:

(i) accessing the Licensing Information System, the court records, and the database;

(ii) maintaining strict security; and

(iii) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(c) Those designated under Subsection (5)(a)(i):

(i) are the only ones in the department with the authority to access the Licensing Information System, the court records, and database; and

(ii) may only access the Licensing Information System, the court records, and the database for the purpose of licensing and in accordance with the provisions of Subsection (4).

(6) (a) Within 10 days of initially hiring a covered individual, a covered health care facility shall submit the covered individual's information to the department in accordance with Subsection (2).

(b) (i) Prior to, or within 10 days of initially hiring an individual to provide care to an elderly adult or a disabled person in the home of the elderly adult or disabled person, a covered employer may submit the employed individual's information to the department.

(ii) The department shall:

(A) in accordance with Subsections (4) and (6)(c) of this section, and Subsection 62A-3-311.1(4)(b), determine whether the individual has a substantiated finding of abuse, neglect, or exploitation of a minor or an elderly adult; and

(B) in accordance with Subsection (9), inform the covered employer of the department's findings.

(c) A covered employer:

(i) [~~must~~] shall certify to the department that the covered employer intends to hire, or has hired, the individual whose information the covered employer has submitted to the department for the purpose of providing care to an elderly adult or a disabled person in the home of the elderly adult or disabled person;

(ii) [~~must~~] shall pay the reasonable fees established by the department under Subsection (8); and

(iii) commits an infraction if the covered employer intentionally misrepresents any fact certified under Subsection (6)(c)(i).

(7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person who has been convicted of a criminal offense, or a person described in Subsection (4), may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal conviction or substantiated finding and its relation to patient care.

(8) The department may, in accordance with Section 26-1-6, assess reasonable fees for a criminal background check processed pursuant to this section.

(9) The department may inform the covered health care facility or a covered employer of information discovered under Subsection (4) with respect to a covered individual, or an individual whose name is submitted by a covered employer.

(10) (a) A covered health care facility is not civilly liable for submitting information to the department as required by this section.

(b) A covered employer is not civilly liable for submitting information to the department as permitted by this section if the covered employer:

(i) complies with Subsection (6)(c)(i); and

(ii) does not use the information obtained about an individual under this section for any purpose other than hiring decisions directly related to the care of the elderly adult or disabled person.

Section 183. Section **26-23-7** is amended to read:

26-23-7. Application of enforcement procedures and penalties.

Enforcement procedures and penalties provided in this chapter [~~shall not~~] do not apply to other chapters in this title which provide for specific enforcement procedures and penalties.

Section 184. Section **26-23-10** is amended to read:

26-23-10. Religious exemptions from code -- Regulation of state-licensed healing system practice unaffected by code.

(1) [~~Nothing~~] (a) Except as provided in Subsection (1)(b), nothing in this code shall be construed to compel any person to submit to any medical or dental examination or treatment under the authority of this code when such person, or the parent or guardian of any such person objects to such examination or treatment on religious grounds, or to permit any discrimination against such person on account of such objection[~~; provided, that~~].

(b) An exemption from medical or dental examination [~~shall not~~], described in Subsection (1)(a), may not be granted if the executive director has reasonable cause to suspect a substantial menace to the health of other persons exposed to contact with the unexamined person.

(2) Nothing in this code shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination, provided the statutes and regulations on sanitation are complied with.

(3) Nothing in this code shall be construed or used to amend any statute now in force pertaining to the scope of practice of any state-licensed healing system.

Section 185. Section **26-23b-104** is amended to read:

26-23b-104. Authorization to report.

(1) A health care provider is authorized to report to the department any case of a reportable emergency illness or health condition in any person when:

(a) the health care provider knows of a confirmed case; or

(b) the health care provider believes, based on [~~his~~] the health care provider's professional judgment that a person likely harbors a reportable emergency illness or health

condition.

(2) A report pursuant to this section shall include, if known:

(a) the name of the facility submitting the report;

(b) a patient identifier that allows linkage with the patient's record for follow-up investigation if needed;

(c) the date and time of visit;

(d) the patient's age and sex;

(e) the zip code of the patient's residence;

(f) the reportable illness or condition detected or suspected;

(g) diagnostic information and, if available, diagnostic codes assigned to the visit; and

(h) whether the patient was admitted to the hospital.

(3) (a) If the department determines that a public health emergency exists, the department may, with the concurrence of the governor and the executive director or in the absence of the executive director, [~~his~~] the executive director's designee, issue a public health emergency order and mandate reporting under this section for a limited reasonable period of time, as necessary to respond to the public health emergency.

(b) The department may not mandate reporting under this subsection for more than 90 days. If more than 90 days is needed to abate the public health emergency declared under Subsection (3)(a), the department [~~must~~] shall obtain the concurrence of the governor to extend the period of time beyond 90 days.

(4) (a) Unless the provisions of Subsection (3) apply, a health care provider is not subject to penalties for failing to submit a report under this section.

(b) If the provisions of Subsection (3) apply, a health care provider is subject to the penalties of Subsection 26-23b-103(3) for failure to make a report under this section.

Section 186. Section **26-25-5** is amended to read:

26-25-5. Violation of chapter a misdemeanor -- Civil liability.

(1) Any use, release or publication, negligent or otherwise, contrary to the provisions of this chapter [~~shall be~~] is a class B misdemeanor.

(2) Subsection (1) [~~shall not~~] does not relieve the person or organization responsible for such use, release, or publication from civil liability.

Section 187. Section **26-28-105** is amended to read:

26-28-105. Manner of making anatomical gift before donor's death.

(1) A donor may make an anatomical gift:

(a) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver license or identification card;

(b) in a will;

(c) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) as provided in Subsection (2).

(2) A donor or other person authorized to make an anatomical gift under Section 26-28-104 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and [~~must~~] shall:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) state that it has been signed and witnessed as provided in Subsection (2)(a).

(3) Revocation, suspension, expiration, or cancellation of a driver license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Section 188. Section **26-28-106** is amended to read:

26-28-106. Amending or revoking anatomical gift before donor's death.

(1) Subject to Section 26-28-108, a donor or other person authorized to make an anatomical gift under Section 26-28-104 may amend or revoke an anatomical gift by:

(a) a record signed by:

(i) the donor;

(ii) the other person; or

(iii) subject to Subsection (2), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(b) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to Subsection (1)(a)(iii) [~~must~~] shall:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) state that it has been signed and witnessed as provided in Subsection (1)(a).

(3) Subject to Section 26-28-108, a donor or other person authorized to make an anatomical gift under Section 26-28-104 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection (1).

Section 189. Section **26-28-107** is amended to read:

26-28-107. Refusal to make anatomical gift -- Effect of refusal.

(1) An individual may refuse to make an anatomical gift of the individual's body or part by:

(a) a record signed by:

(i) the individual; or

(ii) subject to Subsection (2), another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(2) A record signed pursuant to Subsection (1)(a)(ii) [~~must~~] shall:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) state that it has been signed and witnessed as provided in Subsection (1)(a).

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) in the manner provided in Subsection (1) for making a refusal;

(b) by subsequently making an anatomical gift pursuant to Section 26-28-105 that is inconsistent with the refusal; or

(c) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(4) Except as otherwise provided in Subsection 26-28-108(8), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Section 190. Section **26-28-111** is amended to read:

26-28-111. Persons that may receive anatomical gift -- Purpose of anatomical gift.

(1) An anatomical gift may be made to the following persons named in the document of gift:

(a) a hospital, accredited medical school, dental school, college, university, organ procurement organization, or other appropriate person, for research or education;

(b) subject to Subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(c) an eye bank or tissue bank.

(2) If an anatomical gift to an individual under Subsection (1)(b) cannot be

transplanted into the individual, the part passes in accordance with Subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in Subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of Subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift [~~must~~] shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in Subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (7).

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (7).

(7) For purposes of Subsections (2), (5), and (7) the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under Subsection (1)(b), passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to Subsections (2) through (8) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 26-28-105 or 26-28-110 or if the person knows that the decedent made a refusal under Section 26-28-107 that was not revoked. For purposes of this Subsection (10), if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in Subsection (1)(b), nothing in this chapter affects the allocation of organs for transplantation or therapy.

Section 191. Section **26-28-114** is amended to read:

26-28-114. Rights and duties of procurement organization and others.

(1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization [~~must~~] shall be allowed reasonable access to information in the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation,

therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 26-28-111 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under Subsection (3) or (4) may include an examination of all medical and dental records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under Subsection (1), a procurement organization shall make a reasonable search for any person listed in Section 26-28-109 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to Subsection 26-28-111(9) and Section 26-28-123, the rights of the person to which a part passes under Section 26-28-111 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 26-28-111, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Section 192. Section **26-28-120** is amended to read:

26-28-120. Donor registry.

(1) The Department of Public Safety may establish or contract for the establishment of a donor registry.

(2) The Driver License Division of the Department of Public Safety shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(3) A donor registry [~~must~~] shall:

(a) allow a donor or other person authorized under Section 26-28-104 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(b) be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(c) be accessible for purposes of Subsections (3)(a) and (b) seven days a week on a 24-hour basis.

(4) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(5) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry [~~must~~] shall comply with Subsections (3) and (4).

Section 193. Section **26-28-121** is amended to read:

26-28-121. Effect of anatomical gift on advance health care directive.

(1) As used in this section:

(a) "Advance health care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or if no declaration or directive exists or the agent is not reasonably available, another person authorized by a law other than this chapter to make a health care decision on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict [~~must~~] shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 26-28-109. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if

withholding or withdrawing the measures is not contraindicated by appropriate end of life care.

Section 194. Section **26-28-124** is amended to read:

26-28-124. Uniformity of application and construction.

In applying and construing this uniform act, consideration [~~must~~] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 195. Section **26-31-1** is amended to read:

26-31-1. Procurement and use of blood, plasma, products, and derivatives a service and not a sale.

The procurement, processing, distribution, or use of whole human blood, plasma, blood products, and blood derivatives for the purpose of injecting or transfusing them into the human body together with the process of injecting or transfusing the same shall be construed to be the rendition of a service by every person participating therein and [~~shall not~~] may not be construed to be a sale.

Section 196. Section **26-33a-104** is amended to read:

26-33a-104. Purpose, powers, and duties of the committee.

(1) The purpose of the committee is to direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues.

(2) The committee shall:

(a) develop and adopt by rule, following public hearing and comment, a health data plan that shall among its elements:

(i) identify the key health care issues, questions, and problems amenable to resolution or improvement through better data, more extensive or careful analysis, or improved dissemination of health data;

(ii) document existing health data activities in the state to collect, organize, or make available types of data pertinent to the needs identified in Subsection (2)(a)(I);

(iii) describe and prioritize the actions suitable for the committee to take in response to the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of needed data, and to encourage improvements in existing data collection, interpretation, and reporting activities, and indicate how those actions relate to the activities identified under Subsection (2)(a)(ii);

(iv) detail the types of data needed for the committee's work, the intended data suppliers, and the form in which such data are to be supplied, noting the consideration given to the potential alternative sources and forms of such data and to the estimated cost to the individual suppliers as well as to the department of acquiring these data in the proposed manner; the plan shall reasonably demonstrate that the committee has attempted to maximize cost-effectiveness in the data acquisition approaches selected;

(v) describe the types and methods of validation to be performed to assure data validity and reliability;

(vi) explain the intended uses of and expected benefits to be derived from the data specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis methods; the benefits described [~~must~~] shall demonstrably relate to one or more of the following:

(A) promoting quality health care[~~,~~];

(B) managing health care costs[~~,~~]; or

(C) improving access to health care services;

(vii) describe the expected processes for interpretation and analysis of the data flowing to the committee; noting specifically the types of expertise and participation to be sought in those processes; and

(viii) describe the types of reports to be made available by the committee and the intended audiences and uses;

(b) have the authority to collect, validate, analyze, and present health data in accordance with the plan while protecting individual privacy through the use of a control number as the health data identifier;

(c) evaluate existing identification coding methods and, if necessary, require by rule that health data suppliers use a uniform system for identification of patients, health care facilities, and health care providers on health data they submit under this chapter;

(d) report biennially to the governor and the Legislature on how the committee is meeting its responsibilities under this chapter; and

(e) advise, consult, contract, and cooperate with any corporation, association, or other entity for the collection, analysis, processing, or reporting of health data identified by control number only in accordance with the plan.

(3) The committee may adopt rules to carry out the provisions of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Except for data collection, analysis, and validation functions described in this section, nothing in this chapter shall be construed to authorize or permit the committee to perform regulatory functions which are delegated by law to other agencies of the state or federal governments or to perform quality assurance or medical record audit functions that health care facilities, health care providers, or third party payors are required to conduct to comply with federal or state law. The committee [~~shall not~~] may not recommend or determine whether a health care provider, health care facility, third party payor, or self-funded employer is in compliance with federal or state laws including [~~but not limited to~~] federal or state licensure, insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.

(5) Nothing in this chapter shall be construed to require a data supplier to supply health data identifying a patient by name or describing detail on a patient beyond that needed to achieve the approved purposes included in the plan.

(6) No request for health data shall be made of health care providers and other data suppliers until a plan for the use of such health data has been adopted.

(7) If a proposed request for health data imposes unreasonable costs on a data supplier, due consideration shall be given by the committee to altering the request. If the request is not altered, the committee shall pay the costs incurred by the data supplier associated with satisfying the request that are demonstrated by the data supplier to be unreasonable.

(8) After a plan is adopted as provided in Section 26-33a-106.1, the committee may require any data supplier to submit fee schedules, maximum allowable costs, area prevailing costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other specific arrangements for reimbursement to a health care provider.

(9) The committee [~~shall not~~] may not publish any health data collected under Subsection (8) [~~which~~] that would disclose specific terms of contracts, discounts, or fixed reimbursement arrangements, or other specific reimbursement arrangements between an individual provider and a specific payer.

(10) Nothing in Subsection (8) shall prevent the committee from requiring the submission of health data on the reimbursements actually made to health care providers from any source of payment, including consumers.

Section 197. Section **26-33a-106.5** is amended to read:

26-33a-106.5. Comparative analyses.

(1) The committee may publish compilations or reports that compare and identify health care providers or data suppliers from the data it collects under this chapter or from any other source.

(2) (a) The committee shall publish compilations or reports from the data it collects under this chapter or from any other source which:

(i) contain the information described in Subsection (2)(b); and

(ii) compare and identify by name at least a majority of the health care facilities and institutions in the state.

(b) The report required by this Subsection (2) shall:

(i) be published at least annually; and

(ii) contain comparisons based on at least the following factors:

(A) nationally recognized quality standards;

(B) charges; and

(C) nationally recognized patient safety standards.

(3) The committee may contract with a private, independent analyst to evaluate the

standard comparative reports of the committee that identify, compare, or rank the performance of data suppliers by name. The evaluation shall include a validation of statistical methodologies, limitations, appropriateness of use, and comparisons using standard health services research practice. The analyst [~~must~~] shall be experienced in analyzing large databases from multiple data suppliers and in evaluating health care issues of cost, quality, and access. The results of the analyst's evaluation [~~must~~] shall be released to the public before the standard comparative analysis upon which it is based may be published by the committee.

(4) The committee shall adopt by rule a timetable for the collection and analysis of data from multiple types of data suppliers.

(5) The comparative analysis required under Subsection (2) shall be available free of charge and easily accessible to the public.

Section 198. Section **26-33a-111** is amended to read:

26-33a-111. Health data not subject to subpoena or compulsory process -- Exception.

Identifiable health data obtained in the course of activities undertaken or supported under this chapter [~~shall not be~~] are not subject to subpoena or similar compulsory process in any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual or organization with lawful access to identifiable health data under the provisions of this chapter be compelled to testify with regard to such health data, except that data pertaining to a party in litigation may be subject to subpoena or similar compulsory process in an action brought by or on behalf of such individual to enforce any liability arising under this chapter.

Section 199. Section **26-34-2** is amended to read:

26-34-2. Definition of death -- Determination of death.

(1) An individual is dead if the individual has sustained either:

(a) irreversible cessation of circulatory and respiratory functions; or

(b) irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death [~~must~~] shall be made in accordance with accepted medical standards.

Section 200. Section **26-35a-107** is amended to read:

26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.

If federal law or regulation prohibits the money in the Nursing Care Facilities Account from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to nursing care facilities for providing services pursuant to the Medicaid program [~~must~~] shall be changed as follows:

(1) except as otherwise provided in Subsection (2), to the rates paid to nursing care facilities on June 30, 2004; or

(2) if the Legislature or the department has on or after July 1, 2004, changed the rates paid to facilities through a manner other than the use of expenditures from the Nursing Care Facilities Account, to the rates provided for by the Legislature or the department.

Section 201. Section **26-36a-102** is amended to read:

26-36a-102. Legislative findings.

(1) The Legislature finds that there is an important state purpose to improve the access of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state revenues and increases in enrollment under the Utah Medicaid program.

(2) The Legislature finds that in order to improve this access to those persons described in Subsection (1):

(a) the rates paid to Utah hospitals [~~must~~] shall be adequate to encourage and support improved access; and

(b) adequate funding [~~must~~] shall be provided to increase the rates paid to Utah hospitals providing services pursuant to the Utah Medicaid program.

Section 202. Section **26-36a-203** is amended to read:

26-36a-203. Calculation of assessment.

(1) The division shall calculate the inpatient upper payment limit gap for hospitals for each state fiscal year.

(2) (a) An annual assessment is payable on a quarterly basis for each hospital in an amount calculated at a uniform assessment rate for each hospital discharge, in accordance with

this section.

(b) The uniform assessment rate shall be determined using the total number of hospital discharges for assessed hospitals divided into the total non-federal portion of the upper payment limit gap.

(c) Any quarterly changes to the uniform assessment rate [~~must~~] shall be applied uniformly to all assessed hospitals.

(d) (i) Except as provided in Subsection (2)(d)(ii), the annual uniform assessment rate may not generate more than the non-federal share of the annual upper payment limit gap for the fiscal year.

(ii) (A) For fiscal year 2010 the assessment may not generate more than the non-federal share of the annual upper payment limit gap for the fiscal year.

(B) For fiscal year 2010-11 the department may generate an additional amount from the assessment imposed under Subsection (2)(d)(i) in the amount of $2,000,000 which shall be used by the department and the division as follows:

(I) $1,000,000 to offset Medicaid mandatory expenditures; and

(II) $1,000,000 to offset the reduction in hospital outpatient fees in the state program.

(C) For fiscal years 2011-12 and 2012-13 the department may generate an additional amount from the assessment imposed under Subsection (2)(d)(i) in the amount of $1,000,000 to offset Medicaid mandatory expenditures.

(3) (a) For state fiscal years 2010 and 2011, discharges shall be determined using the data from each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file as of April 1, 2009 for hospital fiscal years ending between October 1, 2007, and September 30, 2008.

(b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file dated March 31, 2009:

(i) the hospital shall submit to the division a copy of the hospital's Medicare Cost Report with a fiscal year end between October 1, 2007, and September 30, 2008; and

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (3)(b)(i).

(c) If a hospital started operations after the due date for a 2007 Medicare Cost Report:

(i) the hospital shall submit to the division a copy of the hospital's most recent complete year Medicare Cost Report; and

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (3)(c)(i).

(d) If a hospital is not certified by the Medicare program and is not required to file a Medicare Cost Report:

(i) the hospital shall submit to the division its applicable fiscal year discharges with supporting documentation;

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (3)(d)(i); and

(iii) the failure to submit discharge information under Subsections (3)(d)(i) and (ii) shall result in an audit of the hospital's records by the department and the imposition of a penalty equal to 5% of the calculated assessment.

(4) (a) For state fiscal year 2012 and 2013, discharges shall be determined using the data from each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file as of:

(i) for state fiscal year 2012, September 30, 2010, for hospital fiscal years ending between October 1, 2008, and September 30, 2009; and

(ii) for state fiscal year 2013, September 30, 2011, for hospital fiscal years ending between October 1, 2009, and September 30, 2010.

(b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file:

(i) the hospital shall submit to the division a copy of the hospital's Medicare Cost Report applicable to the assessment year; and

(ii) the division shall determine the hospital's discharges.

(c) If a hospital is not certified by the Medicare program and is not required to file a Medicare Cost Report:

(i) the hospital shall submit to the division its applicable fiscal year discharges with supporting documentation;

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (4)(c)(i); and

(iii) the failure to submit discharge information shall result in an audit of the hospital's records and a penalty equal to 5% of the calculated assessment.

(5) Except as provided in Subsection (6), if a hospital is owned by an organization that owns more than one hospital in the state:

(a) the assessment for each hospital shall be separately calculated by the department; and

(b) each separate hospital shall pay the assessment imposed by this chapter.

(6) Notwithstanding the requirement of Subsection (5), if multiple hospitals use the same Medicaid provider number:

(a) the department shall calculate the assessment in the aggregate for the hospitals using the same Medicaid provider number; and

(b) the hospitals may pay the assessment in the aggregate.

(7) (a) The assessment formula imposed by this section, and the inpatient access payments under Section 26-36a-205, shall be adjusted in accordance with Subsection (7)(b) if a hospital, for any reason, does not meet the definition of a hospital subject to the assessment under Section 26-36a-103 for the entire fiscal year.

(b) The department shall adjust the assessment payable to the department under this chapter for a hospital that is not subject to the assessment for an entire fiscal year by multiplying the annual assessment calculated under Subsection (3) or (4) by a fraction, the numerator of which is the number of days during the year that the hospital operated, and the denominator of which is 365.

(c) A hospital described in Subsection (7)(a):

(i) that is ceasing to operate in the state, shall pay any assessment owed to the department immediately upon ceasing to operate in the state; and

(ii) shall receive Medicaid inpatient hospital access payments under Section 26-36a-205 for the state fiscal year, adjusted using the same formula described in Subsection (7)(b).

(8) A hospital that is subject to payment of the assessment at the beginning of a state fiscal year, but during the state fiscal year experiences a change in status so that it no longer falls under the definition of a hospital subject to the assessment in Section 26-36a-204, shall:

(a) not be required to pay the hospital assessment beginning on the date established by the department by administrative rule; and

(b) not be entitled to Medicaid inpatient hospital access payments under Section 26-36a-205 on the date established by the department by administrative rule.

Section 203. Section **26-40-110** is amended to read:

26-40-110. Managed care -- Contracting for services.

(1) Program benefits provided to enrollees under the program, as described in Section 26-40-106, shall be delivered in a managed care system if the department determines that adequate services are available where the enrollee lives or resides.

(2) (a) The department shall use the following criteria to evaluate bids from health plans:

(i) ability to manage medical expenses, including mental health costs;

(ii) proven ability to handle accident and health insurance;

(iii) efficiency of claim paying procedures;

(iv) proven ability for managed care and quality assurance;

(v) provider contracting and discounts;

(vi) pharmacy benefit management;

(vii) an estimate of total charges for administering the pool;

(viii) ability to administer the pool in a cost-efficient manner;

(ix) the ability to provide adequate providers and services in the state; and

(x) other criteria established by the department.

(b) The dental benefits required by Section 26-40-106 may be bid out separately from other program benefits.

(c) Except for dental benefits, the department shall request bids for the program's benefits in 2008. The department shall request bids for the program's dental benefits in 2009. The department shall request bids for the program's benefits at least once every five years thereafter.

(d) The department's contract with health plans for the program's benefits shall include risk sharing provisions in which the health plan [~~must~~] shall accept at least 75% of the risk for any difference between the department's premium payments per client and actual medical expenditures.

(3) The executive director shall report to and seek recommendations from the Health Advisory Council created in Section 26-1-7.5:

(a) if the division receives less than two bids or proposals under this section that are acceptable to the division or responsive to the bid; and

(b) before awarding a contract to a managed care system.

(4) (a) The department shall award contracts to responsive bidders if the department determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

(b) The department may contract with the Group Insurance Division within the Utah State Retirement Office to provide services under Subsection (1) if:

(i) the executive director seeks the recommendation of the Health Advisory Council under Subsection (3); and

(ii) the executive director determines that the bids were not acceptable to the department.

(c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b) is not subject to the risk sharing required by Subsection (2)(d).

(5) Title 63G, Chapter 6, Utah Procurement Code, shall apply to this section.

Section 204. Section **26-41-104** is amended to read:

26-41-104. Training in use of epinephrine auto-injector.

(1) (a) Each primary and secondary school in the state, both public and private, shall make initial and annual refresher training, regarding the storage and emergency use of an epinephrine auto-injector, available to any teacher or other school employee who volunteers to become a qualified adult.

(b) The training described in Subsection (1)(a) may be provided by the school nurse, or other person qualified to provide such training, designated by the school district physician, the medical director of the local health department, or the local emergency medical services director.

(2) A person who provides training under Subsection (1) or (6) shall include in the training:

(a) techniques for recognizing symptoms of anaphylaxis;

(b) standards and procedures for the storage and emergency use of epinephrine auto-injectors;

(c) emergency follow-up procedures, including calling the emergency 911 number and contacting, if possible, the student's parent and physician; and

(d) written materials covering the information required under this Subsection (2).

(3) A qualified adult shall retain for reference the written materials prepared in accordance with Subsection (2)(d).

(4) A public school shall permit a student to possess an epinephrine auto-injector or possess and self-administer an epinephrine auto-injector if:

(a) the student's parent or guardian signs a statement:

(i) authorizing the student to possess or possess and self-administer an epinephrine auto-injector; and

(ii) acknowledging that the student is responsible for, and capable of, possessing or possessing and self-administering an epinephrine auto-injector; and

(b) the student's health care provider provides a written statement that states that:

(i) it is medically appropriate for the student to possess or possess and self-administer

an epinephrine auto-injector; and

(ii) the student should be in possession of the epinephrine auto-injector at all times.

(5) The Utah Department of Health, in cooperation with the state superintendent of public instruction, shall design forms to be used by public schools for the parental and health care providers statements described in Subsection (6).

(6) (a) The department:

(i) shall approve educational programs conducted by other persons, to train people under Subsection (6)(b) of this section, regarding the use and storage of emergency epinephrine auto-injectors; and

(ii) may, as funding is available, conduct educational programs to train people regarding the use of and storage of emergency epinephrine auto-injectors.

(b) A person who volunteers to receive training to administer an epinephrine auto-injector under the provisions of this Subsection (6) [~~must~~] shall demonstrate a need for the training to the department, which may be based upon occupational, volunteer, or family circumstances, and shall include:

(i) camp counselors;

(ii) scout leaders;

(iii) forest rangers;

(iv) tour guides; and

(v) other persons who have or reasonably expect to have responsibility for at least one other person as a result of the person's occupational or volunteer status.

(7) The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish and approve training programs in accordance with this section; and

(b) establish a procedure for determining the need for training under Subsection (6)(b)(v).

Section 205. Section **26-47-103** is amended to read:

26-47-103. Department to award grants for assistance to persons with bleeding

disorders.

(1) For purposes of this section:

(a) "Hemophilia services" means a program for medical care, including the costs of blood transfusions, and the use of blood derivatives and blood clotting factors.

(b) "Person with a bleeding disorder" means a person:

(i) who is medically diagnosed with hemophilia or a bleeding disorder;

(ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and

(iii) who has either:

(A) insurance coverage that excludes coverage for hemophilia services;

(B) exceeded the person's insurance plan's annual maximum benefits;

(C) exceeded the person's annual or lifetime maximum benefits payable under Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act; or

(D) insurance coverage available under either private health insurance, Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, Utah mini COBRA coverage under Section 31A-22-722, or federal COBRA coverage, but the premiums for that coverage are greater than a percentage of the person's annual adjusted gross income as established by the department by administrative rule.

(2) (a) Within appropriations specified by the Legislature for this purpose, the department shall make grants to public and nonprofit entities who assist persons with bleeding disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for coverage of hemophilia services.

(b) Applicants for grants under this section:

(i) [~~must~~] shall be submitted to the department in writing; and

(ii) [~~must~~] shall comply with Subsection (3).

(3) Applications for grants under this section shall include:

(a) a statement of specific, measurable objectives, and the methods to be used to assess the achievement of those objectives;

(b) a description of the personnel responsible for carrying out the activities of the grant

along with a statement justifying the use of any grant funds for the personnel;

(c) letters and other forms of evidence showing that efforts have been made to secure financial and professional assistance and support for the services to be provided under the grant;

(d) a list of services to be provided by the applicant;

(e) the schedule of fees to be charged by the applicant; and

(f) other provisions as determined by the department.

(4) The department may accept grants, gifts, and donations of money or property for use by the grant program.

(5) (a) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the application form, process, and criteria it will use in awarding grants under this section.

(b) The department shall submit an annual report on the implementation of the grant program:

(i) by no later than November 1; and

(ii) to the Health and Human Services Interim Committee and the Health and Human Services Appropriations Subcommittee.

Section 206. Section **26-49-202** is amended to read:

26-49-202. Volunteer health practitioner registration systems.

(1) To qualify as a volunteer health practitioner registration system, the registration system [~~must~~] shall:

(a) accept applications for the registration of volunteer health practitioners before or during an emergency;

(b) include information about the licensure and good standing of health practitioners that is accessible by authorized persons;

(c) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and

(d) meet one of the following conditions:

(i) be an emergency system for advance registration of volunteer health practitioners established by a state and funded through the United States Department of Health and Human Services under Section 319I of the Public Health Services Act, 42 U.S.C. Sec. 247d-7b, as amended;

(ii) be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed under Section 2801 of the Public Health Services Act, 42 U.S.C. Sec. 300hh as amended;

(iii) be operated by a:

(A) disaster relief organization;

(B) licensing board;

(C) national or regional association of licensing boards or health practitioners;

(D) health facility that provides comprehensive inpatient and outpatient healthcare services, including tertiary care; or

(E) governmental entity; or

(iv) be designated by the Department of Health as a registration system for purposes of this chapter.

(2) (a) Subject to Subsection (2)(b), while an emergency declaration is in effect, the Department of Health, a person authorized to act on behalf of the Department of Health, or a host entity shall confirm whether a volunteer health practitioner in Utah is registered with a registration system that complies with Subsection (1).

(b) The confirmation authorized under this Subsection (2) is limited to obtaining the identity of the practitioner from the system and determining whether the system indicates that the practitioner is licensed and in good standing.

(3) Upon request of a person authorized under Subsection (2), or a similarly authorized person in another state, a registration system located in Utah shall notify the person of the identity of a volunteer health practitioner and whether or not the volunteer health practitioner is licensed and in good standing.

(4) A host entity is not required to use the services of a volunteer health practitioner even if the volunteer health practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

Section 207. Section **26-49-701** is amended to read:

26-49-701. Uniformity of application and construction.

In applying and construing this chapter, consideration [~~must~~] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 208. Section **26A-1-112** is amended to read:

26A-1-112. Appointment of personnel.

(1) All local health department personnel shall be hired by the local health officer or [~~his~~] the local health officer's designee in accordance with the merit system, personnel policies, and compensation plans approved by the board and ratified pursuant to Subsection (2). The personnel shall have qualifications for their positions equivalent to those approved for comparable positions in the Departments of Health and Environmental Quality.

(2) The merit system, personnel policies, and compensation plans approved under Subsection (1) [~~must~~] shall be ratified by all the counties participating in the local health department.

(3) Subject to the local merit system, employees of the local health department may be removed by the local health officer for cause. A hearing shall be granted if requested by the employee.

Section 209. Section **26A-1-126** is amended to read:

26A-1-126. Medical reserve corps.

(1) In addition to the duties listed in Section 26A-1-114, a local health department may establish a medical reserve corps in accordance with this section.

(2) The purpose of a medical reserve corps is to enable a local health authority to respond with appropriate health care professionals to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the president of the United States or other federal official requesting public health related activities.

(3) When an emergency has been declared in accordance with Subsection (2), a local health department may activate a medical reserve corps for the duration of the emergency.

(4) For purposes of this section, a medical reserve corps may include persons who:

(a) are licensed under Title 58, Occupations and Professions, and who are operating within the scope of their practice;

(b) are exempt from licensure, or operating under modified scope of practice provisions in accordance with Subsections 58-1-307(4) and (5); and

(c) within the 10 years preceding the declared emergency, held a valid license, in good standing in Utah, for one of the occupations described in Subsection 58-13-2(1), but the license is not currently active.

(5) (a) Notwithstanding the provisions of Subsections 58-1-307(4)(a) and (5)(b) the local health department may authorize a person described in Subsection (4) to operate in a modified scope of practice as necessary to respond to the declared emergency.

(b) A person operating as a member of an activated medical reserve corps under this section:

(i) [~~must~~] shall be volunteering for and supervised by the local health department;

(ii) [~~must~~] shall comply with the provisions of this section;

(iii) is exempt from the licensing laws of Title 58, Occupations and Professions; and

(iv) [~~must~~] shall carry a certificate issued by the local health department which designates the individual as a member of the medical reserve corps during the duration of the emergency.

(6) The local department of health may access the Division of Occupational and Professional Licensing database for the purpose of determining if a person's current or expired license to practice in the state was in good standing.

(7) The local department of health shall maintain a registry of persons who are members of a medical reserve corps. The registry of the medical reserve corps shall be made available to the public and to the Division of Occupational and Professional Licensing.

Section 210. Section **29-1-2** is amended to read:

29-1-2. Property worth more than $250 -- Limitation of liability -- Special arrangements -- Theft by, or negligence of, innkeeper or servant.

An innkeeper, hotel keeper, boarding house or lodging house keeper [~~shall not be obliged~~] is not required to receive from a guest for deposit in such safe or vault, property described in the next preceding section exceeding a total value of $250, and [~~shall not be~~] is not liable for such property exceeding such value whether received or not. Such innkeeper, hotel keeper, boarding house or lodging house keeper, by special arrangement with a guest, may receive for deposit in such safe or vault property upon such written terms as may be agreed upon. [~~An~~] A person who is an innkeeper, hotel keeper, boarding house or lodging house keeper shall be liable for a loss of any of such property of a guest in [~~his~~] the person's inn caused by the theft or negligence of the innkeeper or [~~his~~] the innkeeper's servant.

Section 211. Section **29-1-3** is amended to read:

29-1-3. Other personal property -- Limitation of liability.

(1) The liability of a person who is an innkeeper, hotel keeper, boarding or lodging house keeper, for loss of or injury to personal property placed in [~~his care by his~~] the person's care by the person's guests other than that described in Section 29-1-1, shall be that of a depositary for hire. [~~Such liability shall not~~]

(2) The liability described in Subsection (1) may not exceed $150 for each trunk and its contents, $50 for each valise, suitcase or other piece of hand luggage and its contents, and $10 for each box, bundle or package, and its contents, so placed in [~~his~~] the person's care, unless [~~he~~] the person has consented in writing with [~~such~~] the guest to assume a greater liability.

Section 212. Section **30-1-4.5** is amended to read:

30-1-4.5. Validity of marriage not solemnized.

(1) A marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between a man and a woman who:

(a) are of legal age and capable of giving consent;

(b) are legally capable of entering a solemnized marriage under the provisions of this

chapter;

(c) have cohabited;

(d) mutually assume marital rights, duties, and obligations; and

(e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.

(2) The determination or establishment of a marriage under this section [~~must~~] shall occur during the relationship described in Subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Section 213. Section **30-1-5** is amended to read:

30-1-5. Marriage solemnization -- Before unauthorized person -- Validity.

(1) A marriage solemnized before a person professing to have authority to perform marriages [~~shall not~~] may not be invalidated for lack of authority, if consummated in the belief of the parties or either of them that [~~he~~] the person had authority and that they have been lawfully married.

(2) This section may not be construed to validate a marriage that is prohibited or void under Section 30-1-2.

Section 214. Section **30-1-10** is amended to read:

30-1-10. Application by persons unknown to clerk -- Affidavit -- Penalty.

(1) When the parties are personally unknown to the clerk a license [~~shall not issue~~] may not be issued until an affidavit is made before [~~him~~] the clerk, which shall be filed and preserved by [~~him~~] the clerk, by a party applying for [~~such~~] the license, showing that there is no lawful reason in the way of [~~such~~] the marriage. [~~The party making such affidavit or any subscribing witness, if he falsely swears therein, is guilty of perjury.~~]

(2) A party who makes an affidavit described in Subsection (1) or a subscribing witness to the affidavit who falsely swears in the affidavit is guilty of perjury.

Section 215. Section **30-1-32** is amended to read:

30-1-32. Master plan for counseling.

(1) It shall be the function and duty of the premarital counseling board, after holding public hearings, to make, adopt, and certify to the county legislative body a master plan for premarital counseling of marriage license applicants within the purposes and objectives of this act.

(2) The master plan [~~shall include, but not be limited to,~~] described in Subsection (1) shall include:

(a) counseling procedures [~~which~~] that:

(i) will make applicants aware of problem areas in their proposed marriage [~~and~~];

(ii) suggest ways of meeting problems [~~and which~~]; and

(iii) will induce reconsideration or postponement [~~where~~] when:

(A) the applicants are not sufficiently matured or are not financially capable of meeting the responsibilities of marriage; or

(B) are marrying for reasons not conducive to a sound lasting marriage[~~. The plan shall include~~]; and

(b) standards for evaluating premarital counseling received by the applicants, prior to their application for a marriage license, which would justify issuance of certificate without further counseling being given or required.

(3) The board may, from time to time, amend or extend the plan described in Subsection (1).

(4) The premarital counseling board may, subject to Subsection (5):

(a) appoint a staff and employees as may be necessary for its work; and [~~may~~]

(b) contract with social service agencies or other consultants within the county or counties for services it requires[~~, providing, its expenditures shall not~~].

(5) Expenditures for the appointments and contracts described in Subsection (4) may not exceed the sums appropriated by the county legislative body plus sums placed at its disposal through gift or otherwise.

Section 216. Section **30-1-33** is amended to read:

30-1-33. Conformity to master plan for counseling as prerequisite to marriage license -- Exceptions.

Whenever the board of commissioners of a county has adopted a master plan for premarital counseling no resident of the county may obtain a marriage license without conforming to the plan, except that:

(1) Any person who applies for a marriage license shall have the right to secure the license and to marry notwithstanding their failure to conform to the required premarital counseling or their failure to obtain a certificate of authorization from the premarital counseling board if they wait six months from the date of application for issuance of the license.

(2) This [~~act shall not~~] chapter does not apply to any application for a marriage license where both parties are at least 19 years of age and neither has been previously divorced.

(3) This [~~act shall not~~] chapter does not apply to any application for a marriage license unless both applicants have physically resided in [~~the state of~~] Utah for 60 days immediately preceding their application.

(4) Premarital counseling required by this act shall be [~~deemed~~] considered fulfilled if the applicants present a certificate verified by a clergyman that the applicants have completed a course of premarital counseling approved by [~~his~~] a church and given by or under the supervision of the clergyman.

Section 217. Section **30-1-35** is amended to read:

30-1-35. Persons performing counseling services designated by board -- Exemption from license requirements.

For the purposes of this [~~act~~] chapter the premarital counseling board of each county or combination of counties may determine those persons who are to perform any services under this [~~act~~] chapter and any person so acting [~~shall not be~~] is not subject to prosecution or other sanctions for [~~his~~] the person's failure to hold any license for these services as may be required by the laws of the state [~~of Utah~~].

Section 218. Section **30-1-37** is amended to read:

30-1-37. Confidentiality of information obtained under counseling provisions.

Except for the information required or to be required on the marriage license application form, any information given by a marriage license applicant in compliance with this [~~act~~] chapter shall be confidential information and [~~shall not~~] may not be released by any person, board, commission, or other entity. However, the premarital counseling board or board of commissioners may use the information, without identification of individuals, to compile and release statistical data.

Section 219. Section **30-2-7** is amended to read:

30-2-7. Husband's liability for wife's torts.

For civil injuries committed by a married woman damages may be recovered from her alone, and her husband [~~shall not~~] may not be held liable [~~therefor~~] for those civil injuries, except in cases where he would be jointly liable with her if the marriage did not exist.

Section 220. Section **30-3-16.7** is amended to read:

30-3-16.7. Effect of petition -- Pendency of action.

(1) The filing of a petition for conciliation under this act shall, for a period of 60 days thereafter, act as a bar to the filing by either spouse of an action for divorce, annulment of marriage or separate maintenance unless the court otherwise orders.

(2) The pendency of an action for divorce, annulment of marriage or separate maintenance [~~shall not~~] does not prevent either party to the action from filing a petition for conciliation under this act, either on [~~his~~] the party's own or at the request and direction of the court as authorized by Section 30-3-17[~~; and the~~].

(3) The filing of a petition for conciliation shall stay for a period of 60 days, unless the court otherwise orders, any trial or default hearing upon the complaint. [~~However,~~]

(4) Notwithstanding any other provision of this section, when the judge of the family court division is advised in writing by a marriage counselor to whom a petition for conciliation has been referred that a reconciliation of the parties cannot be effected, the bar to filing an action or the stay of trial or default hearing shall be removed.

Section 221. Section **30-3-17** is amended to read:

30-3-17. Power and jurisdiction of judge.

(1) The judge of a district court may:

(a) counsel either spouse or both [~~and may in his~~];

(b) in the judge's discretion require one or both [~~of them~~] spouses to appear before [~~him and,~~] the judge;

(c) in those counties where a domestic relations counselor has been appointed pursuant to this [~~act~~] chapter, require [~~them~~] the spouses to file a petition for conciliation and to appear before [~~such~~] the counselor[~~,~~]; or [~~may~~]

(d) recommend the aid of:

(i) a physician, psychiatrist, psychologist, social service worker, or other specialists or scientific expert[~~,~~]; or

(ii) the pastor, bishop, or presiding officer of any religious denomination to which the parties may belong.

(2) The power and jurisdiction granted by this [~~act shall be~~] chapter is in addition to, and not in limitation of, that presently exercised by the district courts [~~and shall not be in limitation thereof~~].

Section 222. Section **30-3-17.1** is amended to read:

30-3-17.1. Proceedings considered confidential -- Written evaluation by counselor.

(1) The petition for conciliation and all communications, verbal or written, from the parties to the domestic relations counselors or other personnel of the conciliation department in counseling or conciliation proceedings shall be [~~deemed~~] considered to be made in official confidence within the meaning of Section 78B-1-137 and [~~shall not be~~] is not admissible or usable for any purpose in any divorce hearing or other proceeding. [~~However,~~]

(2) Notwithstanding Subsection (1), the marriage counselor may submit to the appropriate court a written evaluation of the prospects or prognosis of a particular marriage without divulging facts or revealing confidential disclosures.

Section 223. Section **30-3-18** is amended to read:

30-3-18. Waiting period for hearing after filing for divorce -- Exemption -- Use of

counseling and education services not to be construed as condonation or promotion.

(1) Unless the court, for good cause shown and set forth in the findings, otherwise orders, no hearing for decree of divorce shall be held by the court until 90 days shall have elapsed from the filing of the complaint, [~~provided~~] but the court may make [~~such~~] interim orders as may be just and equitable.

(2) The 90-day period as provided in Subsection (1) [~~shall not~~] does not apply in any case where both parties have completed the mandatory educational course for divorcing parents as provided in Section 30-3-11.3.

(3) The use of counseling, mediation, and education services provided under this chapter may not be construed as condoning the acts that may constitute grounds for divorce on the part of either spouse nor of promoting divorce.

Section 224. Section **30-3-33** is amended to read:

30-3-33. Advisory guidelines.

In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5, the following advisory guidelines are suggested to govern all parent-time arrangements between parents.

(1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.

(2) The parent-time schedule shall be utilized to maximize the continuity and stability of the child's life.

(3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.

(4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.

(5) If the noncustodial parent will be providing transportation, the custodial parent

shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.

(6) If the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.

(7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.

(8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but [~~shall not~~] may not diminish the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5.

(9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.

(10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.

(11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.

(12) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.

(13) Each parent shall provide the other with [~~his~~] the parent's current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.

(14) Each parent shall permit and encourage, during reasonable hours, reasonable and

uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(a) the best interests of the child;

(b) each parent's ability to handle any additional expenses for virtual parent-time; and

(c) any other factors the court considers material.

(15) Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the children, to provide the child care. Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.

(16) Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.

(17) Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

(18) If the child is on a different parent-time schedule than a sibling, based on Sections 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.

Section 225. Section **30-8-3** is amended to read:

30-8-3. Writing -- Signature required.

A premarital agreement [~~must~~] shall be in writing and signed by both parties. It is enforceable without consideration.

Section 226. Section **31A-2-301** is amended to read:

31A-2-301. Special hearing officers -- Witness and mileage fees.

(1) If the commissioner considers it necessary because of the technicality or complexity of the subject, [~~he~~] the commissioner may appoint a special hearing officer from outside the department staff and may contract for a reasonable professional fee for the services.

(2) (a) In hearings before the commissioner, witness fees and reimbursement for mileage traveled, if claimed, shall be allowed at the same rate as in district courts.

(b) Witness fees and reimbursement for mileage, together with the actual expense necessarily incurred in securing attendance of witnesses and their testimony, and the hearing officer's fee and reasonable actual expenses, shall be paid by the Insurance Department.

(c) The commissioner shall be reimbursed for these costs as provided in Section 31A-2-205 if:

(i) the hearing is incident to an examination for which costs are payable under Section 31A-2-205; or

(ii) the commissioner orders the persons involved in the hearing to reimburse the department for hearing costs, which the commissioner may do if [~~he~~] the commissioner had reasonable cause to believe that the order which issued or might have issued was necessary.

(3) Whenever the commissioner is reimbursed for costs under this section, the expenditures [~~shall not~~] may not be charged against the department budget.

Section 227. Section **31A-2-302** is amended to read:

31A-2-302. Commissioner's disapproval.

(1) When the law requires the commissioner's approval for a certain action without a deemer clause, that approval [~~must~~] shall be express. The commissioner's disapproval of an action is assumed if the commissioner does not act within 60 days after receiving the application for approval or give notice of the commissioner's reasonable extension of that time period with the commissioner's reasons for the extension. Assumed disapproval under this subsection entitles the aggrieved person to request agency action under Section 63G-4-201.

(2) When the law provides that a certain action is not effective if disapproved by the commissioner within a certain period, the affirmative approval by the commissioner may make

the action effective at a designated earlier date, but not earlier than the date of the commissioner's affirmative approval.

(3) Subsections (1) and (2) do not apply to the extent that the law specifically provides otherwise.

Section 228. Section **31A-5-208** is amended to read:

31A-5-208. Deposit of proceeds of subscriptions.

(1) All funds, and the securities and documents representing interests in property, received by a stock corporation for stock subscriptions or by a mutual for applications for insurance policies or for mutual bond or contribution note subscriptions, shall be deposited in the name of the corporation with a custodian financial institution qualified under Subsection 31A-2-206(1). This deposit is subject to an escrow agreement approved by the commissioner under which withdrawals may be made only in accordance with conditions specified in the agreement, and with the commissioner's approval. Securities may be held as authorized in Subsection 31A-2-206(2) and [~~must~~] are required to be approved by the commissioner.

(2) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Section 229. Section **31A-5-305** is amended to read:

31A-5-305. Authorized securities.

(1) (a) The articles of incorporation of a stock corporation may authorize the kind of shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except that:

(i) nonvoting common stock may not be issued;

(ii) all classes of common stock [~~must~~] shall have equal voting rights;

(iii) all common stock [~~must~~] shall have a stated par value; and

(iv) except with the commissioner's approval, for two years after the initial issuance of a certificate of authority, the corporation may issue no shares and no other securities convertible into shares except a single class of common stock.

(b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or

scrip.

(c) The consideration and payment for shares and certificates representing shares is governed by Subsection 31A-5-207(1)(a).

(d) The liability of subscribers and shareholders for unpaid subscriptions and the status of stock is governed by Section 16-10a-622.

(e) A shareholder's preemptive rights is governed by Section 16-10a-630.

(f) Stock corporations may issue bonds and contribution notes on the same basis as mutuals under Subsections (2)(a) and (b).

(2) (a) The articles of incorporation of a nonassessable mutual may authorize bonds of one or more classes. The articles of incorporation shall specify the amount of each class of bonds the corporation is authorized to issue, their designations, preferences, limitations, rates of interest, relative rights, and other terms, subject to all of the following provisions:

(i) During the first year after the initial issuance of a certificate of authority, the corporation may issue only a single class of bonds with identical rights.

(ii) After the first year, but within five years after the initial issuance of a certificate of authority, additional classes of bonds may be authorized after receiving the approval of the commissioner. The commissioner shall approve the issuance if the commissioner finds that policyholders and prior bondholders will not be prejudiced.

(iii) The rate of interest shall be fair.

(iv) The bonds shall bear a maturity date not later than 10 years from the date of issuance, when principal and accrued interest shall be due and payable, subject to Subsection (2)(d).

(b) A mutual may issue contribution notes with the commissioner's approval. The contribution notes may be denominated by any name that is not misleading. The contribution notes are subject to this subsection. The commissioner may approve the issuance only if the commissioner finds that:

(i) the notes will not be issued in denominations of less than $2,500, and no single issue will be sold to more than 15 persons;

(ii) no discount, commission, or other fee will be paid or allowed;

(iii) the notes will not be the subject of a public offering;

(iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds, or prior contribution notes; and

(v) the mutual's articles or bylaws do not forbid their issuance.

(c) A mutual may not:

(i) if it has any outstanding obligations on bonds or contribution notes, borrow on contribution notes from, or sell bonds to, any other insurer without the approval of the commissioner; or

(ii) make a loan to another insurer except a fully secured loan at usual market rates of interest.

(d) Payment of the principal or interest on bonds or contribution notes may be made in whole or in part only after approval by the commissioner. The commissioner's approval shall be given if all the financial requirements of the issuer to do the insurance business it is then doing will continue to be satisfied after that payment, and if the interests of its insureds and the public are not endangered by the payment. In the event of liquidation under Chapter 27a, Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are subordinate to the payment of principal and interest on any bonds issued by the corporation.

(e) This section does not prevent a mutual from borrowing money on notes which are its general obligations, nor from pledging any part of its disposable assets.

(3) This section does not apply to securities issued prior to July 1, 1986.

Section 230. Section **31A-6a-104** is amended to read:

31A-6a-104. Required disclosures.

(1) A service contract reimbursement insurance policy insuring a service contract that is issued, sold, or offered for sale in this state [~~must~~] shall conspicuously state that, upon failure of the service contract provider to perform under the contract, the issuer of the policy shall:

(a) pay on behalf of the service contract provider any sums the service contract provider is legally obligated to pay according to the service contract provider's contractual

obligations under the service contract issued or sold by the service contract provider; or

(b) provide the service which the service contract provider is legally obligated to perform, according to the service contract provider's contractual obligations under the service contract issued or sold by the service contract provider.

(2) (a) A service contract may not be issued, sold, or offered for sale in this state unless the service contract contains the following statements in substantially the following form:

(i) "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. Should the provider fail to pay or provide service on any claim within 60 days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the Insurance Company."; and

(ii) "This service contract or warranty is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."

(b) A service contract or reimbursement insurance policy may not be issued, sold, or offered for sale in this state unless the contract contains a statement in substantially the following form, "Coverage afforded under this contract is not guaranteed by the Property and Casualty Guaranty Association."

(3) A service contract shall:

(a) conspicuously state the name, address, and a toll free claims service telephone number of the reimbursement insurer;

(b) identify the service contract provider, the seller, and the service contract holder;

(c) conspicuously state the total purchase price and the terms under which the service contract is to be paid;

(d) conspicuously state the existence of any deductible amount;

(e) specify the merchandise, service to be provided, and any limitation, exception, or exclusion;

(f) state a term, restriction, or condition governing the transferability of the service contract; and

(g) state a term, restriction, or condition that governs cancellation of the service

contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder or service contract provider.

(4) If prior approval of repair work is required, a service contract [~~must~~] shall conspicuously state the procedure for obtaining prior approval and for making a claim, including:

(a) a toll free telephone number for claim service; and

(b) a procedure for obtaining reimbursement for emergency repairs performed outside of normal business hours.

(5) A preexisting condition clause in a service contract [~~must~~] shall specifically state which preexisting condition is excluded from coverage.

(6) (a) Except as provided in Subsection (6)(c), a service contract [~~must~~] shall state the conditions upon which the use of a nonmanufacturers' part is allowed.

(b) A condition described in Subsection (6)(a) [~~must~~] shall comply with applicable state and federal laws.

(c) This Subsection (6) does not apply to a home warranty contract.

Section 231. Section **31A-8a-201** is amended to read:

31A-8a-201. License required.

(1) Except as provided in Subsection 31A-8a-103(3), prior to operating a health discount program, a person [~~must~~] shall:

(a) be authorized to transact business in this state; and

(b) be licensed by the commissioner.

(2) (a) An application for licensure under this chapter [~~must~~] shall be filed with the commissioner on a form prescribed by the commissioner.

(b) The application shall be sworn to by an officer or authorized representative of the health discount program and shall include:

(i) articles of incorporation with bylaws or other enabling documents that establish the organizational structure;

(ii) information required by the commissioner by administrative rule which the

commissioner determines is necessary to:

(A) identify and locate principals, operators, and marketers involved with the health discount program; and

(B) protect the interests of enrollees of health discount programs, health care providers, and consumers;

(iii) biographical information, and when requested by the commissioner, a criminal background check, under the provisions of Subsection 31A-23a-105(3);

(iv) the disclosures required in Section 31A-8a-203; and

(v) the fee established in accordance with Section 31A-3-103.

Section 232. Section **31A-8a-203** is amended to read:

31A-8a-203. Information filed with the department.

(1) Prior to operating a health discount program, a person [~~must~~] shall submit the following to the commissioner:

(a) a copy of contract forms used by the health discount program for:

(i) health care providers or health care provider networks participating in the health discount program, including the discounts for medical services provided to enrollees;

(ii) marketing;

(iii) administration of the health discount program;

(iv) enrollment;

(v) investment management for the health discount programs; and

(vi) subcontracts for any services;

(b) the program's proposed marketing plan; and

(c) dispute resolution procedures for program holders.

(2) The company [~~must~~] shall file prior to use:

(a) the form of contracts used by the health discount program operator;

(b) the marketing plan; and

(c) dispute resolution procedures.

(3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act, to implement this section.

Section 233. Section **31A-8a-204** is amended to read:

31A-8a-204. Advertising restrictions and requirements.

(1) An operator of a health discount program may not:

(a) use any form of words or terms that may confuse health discount programs with other types of health insurance in advertising or marketing such as "health plan," "health benefit plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue," "premium," and "preferred provider";

(b) use other terms as designated by the commissioner by administrative rule in advertisement or marketing that could reasonably mislead a consumer to believe that a discount health program is any other form of health insurance; or

(c) refer to sales representatives as "agents," "producers," or "consultants."

(2) A health discount program operator:

(a) [~~must~~] shall have a written agreement with any marketer of the health discount program prior to marketing, selling, promoting, or distributing the health discount programs;

(b) [~~must~~] shall file with the commissioner all advertisement, marketing materials, brochures, and discount programs prior to their use or distribution; and

(c) [~~must~~] shall make the following disclosures:

(i) in writing in at least 10-point type and bolded; and

(ii) with any marketing or advertising to the public and with any enrollment forms given to an enrollee:

(A) the program is not a health insurance policy;

(B) the program provides discounts only at certain health care providers for health care services;

(C) the program holder is obligated to pay for all health care services but will receive a discount from those health care providers who have contracted with the health discount program; and

(D) the corporate name and the location of the health discount program operator.

(3) A health discount program operator or marketer who sells the health discount program with another product [~~must~~] shall provide the consumer a written itemization of the fees of the health discount program separate from any fees or charges for the other product, which can be purchased separately.

Section 234. Section **31A-8a-205** is amended to read:

31A-8a-205. Disclosure of health discount program terms.

(1) (a) Health discount program operators [~~must~~] shall provide to each purchaser or potential purchaser a copy of the terms of the discount program at the time of purchase.

(b) For purposes of this section "purchaser" means the employer in an employer sponsored plan, or an individual purchasing outside of an employer relationship.

(2) The disclosure required by Subsection (1) should be clear and thorough and should include any administrative or monthly fees, trial periods, procedures for securing discounts, cancellation procedures and corresponding refund requests, and procedures for filing disputes.

(3) (a) A contract [~~must~~] shall be signed by the purchaser acknowledging the terms before any fees are collected and [~~must~~] shall include notice of the purchaser's 10-day recision rights.

(b) For purposes of this Subsection (3) and Section 46-4-201, when a contract is entered into via telephone, facsimile transmission or the Internet, the following is considered a signing of the contract:

(i) if via the Internet, the online application form is completed and sent by the purchaser to the health discount program operator;

(ii) if via facsimile transmission, the application is completed, signed and faxed to the health discount program operator; or

(iii) if via telephone, the script used by the health discount program operator to solicit the purchaser [~~must~~] shall include any limitations or exclusions to the program, and the contract [~~must~~] shall be provided to the purchaser via facsimile, mail, or email within 10 working days of the purchaser consenting to enrolling over the telephone.

Section 235. Section **31A-8a-206** is amended to read:

31A-8a-206. Provider agreements -- Record keeping.

(1) A health discount program operator may not place any restrictions on an enrollee's access to health care providers such as waiting periods or notification periods.

(2) A health discount program operator may not reimburse health care providers for services rendered to an enrollee, unless the health discount program operator is a licensed third party administrator.

(3) (a) A health discount program operator [~~must~~] shall have a written agreement with a health care provider who agrees to provide discounts to health discount program enrollees.

(b) If the written agreement is with a provider network, the health discount plan [~~must~~] shall require the provider network to have written agreements with each of its health care providers.

(4) The health discount program operator shall maintain a copy of each active health care provider agreement.

Section 236. Section **31A-8a-207** is amended to read:

31A-8a-207. Notice of change.

(1) A health discount program operator [~~must~~] shall provide the commissioner notice of:

(a) any change in the health discount program's organizational name, change of business or mailing address, or change in ownership or principals; and

(b) any change in the information submitted in accordance with Section 31A-8a-203.

(2) (a) The notice required by Subsection (1) [~~should~~] shall be submitted 30 days prior to any change.

(b) [~~The~~] Approval by the commissioner [~~must approve~~] is required for any changes in forms that required approval under Section 31A-8a-203.

(3) A health insurer or health maintenance organization licensed under this title shall annually file with the Accident and Health Data Survey, a list of all value-added benefits offered at no cost to its enrollees.

Section 237. Section **31A-9-503** is amended to read:

31A-9-503. Conversion of a fraternal to a mutual.

A domestic fraternal may be converted into a mutual, as follows:

(1) In addition to complying with the requirements of Chapter 16, Insurance Holding Companies, the board or the supreme governing body shall adopt a plan of conversion stating:

(a) the reasons for and purposes of the proposed action;

(b) the proposed terms, conditions, and procedures and the estimated expenses of implementing the conversion;

(c) the proposed name of the corporation; and

(d) the proposed articles and bylaws.

(2) If the board and the supreme governing body disagree on the conversion plan, the decision of the supreme governing body prevails.

(3) The plan shall be filed with the commissioner for approval, together with any information under Subsection 31A-5-204(2) the commissioner reasonably requires. The commissioner shall approve the plan unless [~~he~~] the commissioner finds, after a hearing, that it would be contrary to the law, that the new mutual would not satisfy the requirements for a certificate of authority under Section 31A-5-212, that the plan would be contrary to the interests of members or the public, or that the applicable requirements of Chapter 16, Insurance Holding Companies, have not been satisfied.

(4) After being approved by the commissioner, the plan shall be submitted for approval to the persons who were voting members on the date of the commissioner's approval under Subsection (3). For approval of the plan, at least a majority of the votes cast [~~must~~] shall be in favor of the plan, or a larger number if required by the laws of the fraternal.

(5) The officers and directors of the fraternal shall be the initial officers and directors of the mutual.

(6) A copy of the resolution adopted under Subsection (4) shall be filed with the commissioner, stating the number of members entitled to vote, the number voting, the method of voting, and the number of votes cast in favor of the plan, stating separately the votes cast by mail and the votes cast in person.

(7) If the requirements of the law are met, the commissioner shall issue a certificate of authority to the new mutual. The fraternal then ceases its legal existence and the corporate existence of the new mutual begins. However, the new mutual is considered to have been incorporated as of the date the converted fraternal was incorporated. The new mutual has all the assets and is liable for all of the obligations of the converted fraternal. The commissioner may grant a period not exceeding one year for adjustment to the requirements of Chapter 5, Domestic Stock and Mutual Insurance Corporations, specifying the extent to which particular provisions of Chapter 5 do not apply.

(8) The corporation may not pay compensation other than regular salaries to existing personnel in connection with the proposed conversion. With the commissioner's approval, payment may be made at reasonable rates for printing costs and for legal and other professional fees for services actually rendered in connection with the conversion. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries of any insurance office staff members involved, shall be paid by the corporation being converted.

Section 238. Section **31A-11-107** is amended to read:

31A-11-107. Issuance of certificate of authority -- Reinsurance of excess services.

(1) The commissioner shall issue a certificate applied for under Section 31A-11-106 if [~~he~~] the commissioner finds that:

(a) the corporation is able to negotiate, execute, and carry out the motor club business in a sound, reliable, and ongoing manner;

(b) the reinsurance requirements of Subsection (2) are satisfied; and

(c) all other applicable requirements of law are satisfied.

(2) If a motor club provides legal expense service other than that authorized in Subsection 31A-11-102(1)(b), or other trip reimbursement service than that authorized in Subsection 31A-11-102(1)(d), or bail service other than that authorized under Section 31A-11-112, it [~~must~~] shall fully reinsure the excess service with an insurer authorized under Chapter 5, Domestic Stock and Mutual Insurance Corporations, or 14, Foreign Insurers. That insurer [~~must~~] shall assume direct liability to the insured, and [~~must~~] shall fully comply with

Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

Section 239. Section **31A-15-203** is amended to read:

31A-15-203. Risk retention groups chartered in this state.

(1) (a) A risk retention group under this part shall be chartered and licensed to write only liability insurance pursuant to this part and, except as provided elsewhere in this part, [~~must~~] shall comply with all of the laws, rules, and requirements that apply to liability insurers chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements are not a limitation on other laws, rules, or requirements of this state.

(b) Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file an annual statement with the department and the NAIC in a form prescribed by the commissioner, and completed in diskette form if required by the commissioner, completed in accordance with the statement instructions and the NAIC Accounting Practices and Procedures Manual.

(2) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision of the plan or study in the event of any subsequent material change in any item of the plan or study within 10 days of any such change. The group may not offer any additional kinds of liability insurance, in this state or in any other state, until any revision of the plan or study is approved by the commissioner.

(3) (a) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(i) the identity of the initial members of the group;

(ii) the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;

(iii) the amount and nature of initial capitalization;

(iv) the coverages to be afforded; and

(v) the states in which the group intends to operate.

(b) Upon receipt of this information the commissioner shall forward the information to the NAIC. Providing notification to the NAIC is in addition to, and may not be sufficient to satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

Section 240. Section **31A-15-207** is amended to read:

31A-15-207. Purchasing groups -- Exemption from certain laws.

A purchasing group and its insurers are subject to all applicable laws of this state, except that a purchasing group and its insurers are exempt, in regard to liability insurance for the purchasing group, from any law that would:

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing group or its members insurance on a basis providing advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on a group basis described in Subsection (2);

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group [~~must~~] have a minimum number of members, common ownership or affiliation, or certain legal form;

(6) require that a certain percentage of a purchasing group [~~must~~] obtain insurance on a group basis;

(7) otherwise discriminate against a purchasing group or any of its members; or

(8) require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance producer residing in this state.

Section 241. Section **31A-15-210** is amended to read:

31A-15-210. Purchasing group taxation.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in

this state by a purchasing group or any members of the purchasing groups are imposed and [~~must~~] shall be paid as follows:

(1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to premium taxes and other taxes imposed on other admitted liability insurers relative to coverage of risks resident or located in this state.

(2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed on the licensed producer who effected coverage on risks resident or located in this state at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to taxes imposed on other licensed producers effecting coverage with approved, nonadmitted surplus lines insurers on risks resident or located in this state.

Section 242. Section **31A-17-503** is amended to read:

31A-17-503. Actuarial opinion of reserves.

(1) This section becomes operative on December 31, 1993.

(2) General: Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered to be necessary to its scope.

(3) Actuarial analysis of reserves and assets supporting reserves:

(a) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by Subsection (2), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including [~~but not limited to~~] the investment earnings on the assets and the considerations anticipated to be received and

retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including [~~but not limited to~~] the benefits under the expenses associated with the policies and contracts.

(b) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may consider necessary in order to render the opinion required by this section.

(4) Requirement for opinion under Subsection (3): Each opinion required by Subsection (3) shall be governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the commissioner as specified by rule, shall be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rule or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(5) Requirement for all opinions: Every opinion shall be governed by the following provisions:

(a) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1993.

(b) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by rule prescribe.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the

requirements applicable to a company domiciled in this state.

(e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth by department rule.

(f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(g) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in rules by the commissioner.

(h) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, are considered protected records under Section 63G-2-305 and may not be made public and are not subject to subpoena under Subsection 63G-2-202(7), other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or rules promulgated under this section. However, the memorandum or other material may otherwise be released by the commissioner (i) with the written consent of the company or (ii) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited in its marketing or is cited before any governmental agency other than the department or is released to the news media, all portions of the memorandum are no longer confidential.

Section 243. Section **31A-17-506** is amended to read:

31A-17-506. Computation of minimum standard by calendar year of issue.

(1) Applicability of Section 31A-17-506: The interest rates used in determining the minimum standard for the valuation shall be the calendar year statutory valuation interest rates as defined in this section for:

(a) all life insurance policies issued in a particular calendar year, on or after the

operative date of Subsection 31A-22-408(6)(d);

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(2) Calendar year statutory valuation interest rates:

(a) The calendar year statutory valuation interest rates, "I," shall be determined as follows and the results rounded to the nearer 1/4 of 1%:

(i) for life insurance:

I = .03 + W(R1 - .03) + (W/2)(R2 - .09);

(ii) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

I = .03 + W(R - .03),

where R1 is the lesser of R and .09,

R2 is the greater of R and .09,

R is the reference interest rate defined in Subsection (4), and

W is the weighting factor defined in this section;

(iii) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Subsection (2)(a)(ii), the formula for life insurance stated in Subsection (2)(a)(i) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years, and the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

(iv) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities

stated in Subsection (2)(a)(ii) shall apply; and

(v) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply.

(b) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than [~~1/2~~] one-half of 1% the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of when Subsection 31A-22-408(6)(d) becomes operative.

(3) Weighting factors:

(a) The weighting factors referred to in the formulas stated in Subsection (2) are given in the following tables:

(i) (A) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less:	.50
More than 10, but less than 20:	.45
More than 20:	.35

(B) For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Subsection (3)(a)(ii), shall be as specified in the tables in Subsections (3)(a)(iii)(A), (B), and (C), according to the rules and definitions in Subsection (3)(b):

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factors for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

Plan Type			
	A	B	C
(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in Subsection (3)(a)(iii)(A) increased by:	.15	.25	.05

Plan Type			
	A	B	C

(C) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received

more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in Subsection (3)(a)(iii)(A) or derived in Subsection (3)(a)(iii)(B) increased by: .05 .05 .05.

(b) (i) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(ii) Plan type as used in the above tables is defined as follows:

(A) Plan Type A: At any time policyholder may withdraw funds only:

(I) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(II) without such adjustment but installments over five years or more;

(III) as an immediate life annuity; or

(IV) no withdrawal permitted.

(B) (I) Plan Type B: Before expiration of the interest rate guarantee, policyholder withdraw funds only:

(Aa) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(Bb) without such adjustment but in installments over five years or more; or

(Cc) no withdrawal permitted.

(II) At the end of interest rate guarantee, funds may be withdrawn without such

adjustment in a single sum or installments over less than five years.

(C) Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either:

(I) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(II) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(iii) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options [~~must~~] shall be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is defined as follows:

(a) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June

30 of the calendar year of issue or year of purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Subsection (4)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Subsection (4)(b), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in Subsection (4)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(5) Alternative method for determining reference interest rates: In the event that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published by Moody's Investors Service, Inc. or in the event that the National Association of Insurance Commissioners determines that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for

the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by rule promulgated by the commissioner, may be substituted.

Section 244. Section **31A-17-507** is amended to read:

31A-17-507. Reserve valuation method -- Life insurance and endowment benefits.

(1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and 31A-17-513, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of Subsection (1)(a) over Subsection (1)(b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium [~~shall not~~] may not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

(2) Provided that for any life insurance policy issued on or after January 1, 1997, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve

valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Section 31A-17-511, be the greater of the reserve as of such policy anniversary calculated as described in Subsection (1) and the reserve as of such policy anniversary calculated as described in that subsection, but with:

(a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such excess first year premium;

(b) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;

(c) the policy being assumed to mature on such date as an endowment; and

(d) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 31A-17-504 and 31A-17-506 shall be used.

(3) Reserves according to the commissioner's reserve valuation method for:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408, Internal Revenue Code;

(c) accident and health and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of Subsections (1) and (2).

Section 245. Section **31A-17-510** is amended to read:

31A-17-510. Optional reserve calculation.

(1) Reserves for all policies and contracts issued prior to January 1, 1994, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to that date. Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after January 1, 1994, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, [~~shall not~~] may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

(2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided; provided, however, that, for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by Section 31A-17-502 [~~shall not~~] may not be considered to be the adoption of a higher standard of valuation.

Section 246. Section **31A-17-512** is amended to read:

31A-17-512. Reserve calculation -- Indeterminate premium plans.

(1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 31A-17-507, 31A-17-508, and 31A-17-511, the reserves which are held under any such plan [~~must~~] shall:

(a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) be computed by a method which is consistent with the principles of this part, as determined by rules promulgated by the commissioner.

Section 247. Section **31A-18-106** is amended to read:

31A-18-106. Investment limitations generally applicable.

(1) The investment limitations listed in Subsections (1)(a) through (m) apply to an insurer.

(a) For an investment authorized under Subsection 31A-18-105(1) that is not amortizable under applicable valuation rules, the limitation is 5% of assets.

(b) For an investment authorized under Subsection 31A-18-105(2), the limitation is 10% of assets.

(c) For an investment authorized under Subsection 31A-18-105(3), the limitation is 50% of assets.

(d) For an investment authorized under Subsection 31A-18-105(4) that is considered to be an investment in a kind of security or evidence of debt pledged, the investment is subject to the class limitations applicable to the pledged security or evidence of debt.

(e) For an investment authorized under Subsection 31A-18-105(5), the limitation is 35% of assets.

(f) For an investment authorized under Subsection 31A-18-105(6), the limitation is:

(i) 20% of assets for a life insurer; and

(ii) 50% of assets for a nonlife insurer.

(g) For an investment authorized under Subsection 31A-18-105(7), the limitation is:

(i) 5% of assets; or

(ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 25% of assets.

(h) For an investment authorized under Subsection 31A-18-105(8), the limitation is:

(i) 20% of assets, inclusive of home office and branch office properties; or

(ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.

(i) For an investment authorized under Subsection 31A-18-105(10), the limitation is 1% of assets.

(j) For an investment authorized under Subsection 31A-18-105(11), the limitation is the greater of that permitted or required for compliance with Section 31A-18-103.

(k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is limited to 50% of the insurer's total adjusted capital. An investment by an insurer in a subsidiary includes:

(i) a loan, advance, or contribution to a subsidiary by an insurer; and

(ii) an insurer holding a bond, note, or stock of a subsidiary.

(l) Under a plan of merger approved by the commissioner, the commissioner may allow an insurer any portion of its assets invested in an insurance subsidiary. The approved plan of merger shall require the acquiring insurer to conform its accounting for investments in subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

(m) For an investment authorized under Subsections 31A-18-105(13) and (14), the aggregate limitation is 10% of assets.

(2) The limits on investments listed in Subsections (2)(a) through (e) apply to each insurer.

(a) (i) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:

(A) an investment in the government of the United States or its agencies;

(B) an investment guaranteed by the government of the United States;

(C) an investment in the insurer's insurance subsidiaries; or

(D) a cash deposit that:

(I) is cash;

(II) is held by a depository institution, as defined in Section 7-1-103, that:

(Aa) is solvent;

(Bb) is federally insured; and

(Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total assets of at least 5%, if the depository institution is not a bank; and

(III) does not exceed the greater of:

(Aa) .4 times the Tier 1 capital of the depository institution; or

(Bb) the amount insured by a federal deposit insurance agency.

(ii) The commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall:

(A) define "Tier 1 leverage ratio";

(B) define "Tier 1 capital"; and

(C) proscribe the method to calculate Tier 1 capital.

(b) An investment authorized by Subsection 31A-18-105(3) shall comply with the requirements listed in this Subsection (2)(b).

(i) (A) Except as provided in this Subsection (2)(b)(i), the amount of a loan secured by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest mortgaged, unless the excess over 80%:

(I) is insured or guaranteed by:

(Aa) the United States;

(Bb) a state of the United States;

(Cc) an instrumentality, agency, or political subdivision of the United States or a state; or

(Dd) a combination of entities described in this Subsection (2)(b)(i)(A)(I); or

(II) is insured by an insurer approved by the commissioner and qualified to insure that type of risk in this state.

(B) A mortgage loan representing a purchase money mortgage acquired from the sale of real estate is not subject to the limitation of Subsection (2)(b)(i)(A).

(ii) Subject to Subsection (2)(b)(v), a loan or evidence of debt secured by real estate may only be secured by:

(A) unencumbered real property that is located in the United States; or

(B) an unencumbered interest in real property that is located in the United States.

(iii) Evidence of debt secured by a first mortgage or deed of trust upon a leasehold estate shall require that:

(A) the leasehold estate exceed the maturity of the loan by not less than 10% of the lease term;

(B) the real estate not be otherwise encumbered; and

(C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

(iv) Subject to Subsection (2)(b)(v):

(A) participation in a mortgage loan [~~must~~] shall:

(I) be senior to other participants; and

(II) give the holder substantially the rights of a first mortgagee; or

(B) the interest of the insurer in the evidence of indebtedness [~~must~~] shall be of equal priority, to the extent of the interest, with other interests in the real property.

(v) A fee simple or leasehold real estate or an interest in a fee simple or leasehold is not considered to be encumbered within the meaning of this chapter by reason of a prior mortgage or trust deed held or assumed by the insurer as a lien on the property, if:

(A) the total of the mortgages or trust deeds held does not exceed 70% of the value of the property; and

(B) the security created by the prior mortgage or trust deed is a first lien.

(c) A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of the market value of the collateral pledged, except that a loan upon the pledge of a United States government bond may be equal to the market value of the pledge.

(d) For an equity interest in a single real estate property authorized under Subsection 31A-18-105(8), the limitation is 5% of assets.

(e) An investment authorized under Subsection 31A-18-105(10) shall be in connection with a potential change in the value of specifically identified:

(i) asset that the insurer owns; or

(ii) liability that the insurer has incurred.

(3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each insurer.

(a) Except for a financial futures contract and real property acquired and occupied by the insurer for home and branch office purposes, a security or other investment is not eligible for purchase or acquisition under this chapter unless it is:

(i) interest bearing or income paying; and

(ii) not then in default.

(b) A security is not eligible for purchase at a price above its market value.

(4) Computation of percentage limitations under this section:

(a) is based only upon the insurer's total qualified invested assets described in Section 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and

(b) excludes investments permitted under Section 31A-18-108 and Subsections 31A-17-203(2) and (3).

(5) An insurer may not make an investment that, because the investment does not conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer Receivership Act.

(6) A pattern of persistent deviation from the investment diversification standards set forth in Section 31A-18-105 and this section may be grounds for a finding that the one or more persons with authority to make the insurer's investment decisions are "incompetent" as used in Subsection 31A-5-410(3).

(7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does not apply to the purchase, holding, investment, or valuation limitations of assets of insurance companies subject to this chapter.

Section 248. Section **31A-19a-206** is amended to read:

31A-19a-206. Disapproval of rates.

(1) (a) Except for a conflict with the requirements of Section 31A-19a-201 or

31A-19a-202, the commissioner may disapprove a rate at any time that the rate directly conflicts with:

(i) this title; or

(ii) any rule made under this title.

(b) The disapproval under Subsection (1)(a) shall:

(i) be in writing;

(ii) specify the statute or rule with which the filing conflicts; and

(iii) state when the rule is no longer effective.

(c) (i) If an insurer's or rate service organization's rate filing is disapproved under Subsection (1)(a), the insurer or rate service organization may request a hearing on the disapproval within 30 calendar days of the date on which the order described in Subsection (1)(a) is issued.

(ii) If a hearing is requested under Subsection (1)(c)(i), the commissioner shall schedule the hearing within 30 calendar days of the date on which the commissioner receives the request for a hearing.

(iii) After the hearing, the commissioner shall issue an order:

(A) approving the rate filing; or

(B) disapproving the rate filing.

(2) (a) If within 90 calendar days of the date on which a rate filing is filed the commissioner finds that the rate filing does not meet the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner shall send a written order disapproving the rate filing to the insurer or rate organization that made the filing.

(b) The order described in Subsection (2)(a) shall specify how the rate filing fails to meet the requirements of Section 31A-19a-201 or 31A-19a-202.

(c) (i) If an insurer's or rate service organization's rate filing is disapproved under Subsection (2)(a), the insurer or rate service organization may request a hearing on the disapproval within 30 calendar days of the date on which the order described in Subsection (2)(a) is issued.

(ii) If a hearing is requested under Subsection (2)(c)(i), the commissioner shall schedule the hearing within 30 calendar days of the date on which the commissioner receives the request for a hearing.

(iii) After the hearing, the commissioner shall issue an order:

(A) approving the rate filing; or

(B) (I) disapproving the rate filing; and

(II) stating when, within a reasonable time from the date on which the order is issued, the rate is no longer effective.

(d) In a hearing held under this Subsection (2), the insurer or rate service organization bears the burden of proving compliance with the requirements of Section 31A-19a-201 or 31A-19a-202.

(3) (a) If the order described in Subsection (2)(a) is issued after the implementation of the rate filing, the commissioner may order that use of the rate filing be discontinued for any policy issued or renewed on or after a date not less than 30 calendar days from the date the order was issued.

(b) If an insurer or rate service organization requests a hearing under Subsection (2), the order to discontinue use of the rate filing is stayed:

(i) beginning on the date the insurer or rate service organization requests a hearing; and

(ii) ending on the date the commissioner issues an order after the hearing that addresses the stay.

(4) If the order described in Subsection (2)(a) is issued before the implementation of the rate filing:

(a) an insurer or rate service organization may not implement the rate filing; and

(b) the rates of the insurer or rate service organization at the time of disapproval continue to be in effect.

(5) (a) If after a hearing the commissioner finds that a rate that has been previously filed and has been in effect for more than 90 calendar days no longer meets the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner may order that use of the rate by any

insurer or rate service organization be discontinued.

(b) The commissioner shall give any insurer that will be affected by an order that may be issued under Subsection (5)(a) notice of the hearing at least 10 business days prior to the hearing.

(c) The order issued under Subsection (5)(a) shall:

(i) be in writing;

(ii) state the grounds for the order; and

(iii) state when, within a reasonable time from the date on which the order is issued, the rate is no longer effective.

(d) The order issued under Subsection (5)(a) [~~shall not~~] may not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(e) The order issued under Subsection (5)(a) may include a provision for a premium adjustment for contracts or policies made or issued after the effective date of the order.

(6) (a) When an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall, on the insurer's request, specify interim rates for the insurer.

(b) An interim rate described in Subsection (6)(a):

(i) shall be high enough to protect the interests of all parties; and

(ii) may, when necessary to protect the policyholders, order that a specified portion of the premiums be placed in an escrow account approved by the commissioner.

(c) When the new rates become effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that minimal refunds to policyholders need not be distributed.

Section 249. Section **31A-19a-208** is amended to read:

31A-19a-208. Special restrictions on individual insurers.

(1) The commissioner may require by order that a particular insurer file any or all of its rates and supplementary rate information 30 calendar days prior to their effective date, if the commissioner finds, after a hearing, that to protect the interests of the insurer's insureds and the

public in Utah, the commissioner [~~must~~] shall exercise closer supervision of the insurer's rates, because of the insurer's financial condition or rating practices.

(2) The commissioner may extend the waiting period described in Subsection (1) for any filing for not to exceed 30 additional calendar days, by written notice to the insurer before the first 30-day period expires.

(3) A filing that has not been disapproved before the expiration of the waiting period is considered to meet the requirements of this chapter, subject to the possibility of subsequent disapproval under Section 31A-19a-206.

Section 250. Section **31A-19a-309** is amended to read:

31A-19a-309. Recording and reporting of experience.

(1) (a) The commissioner may adopt rules for the development of statistical plans, for use by all insurers in recording and reporting their loss and expense experience, in order that the experience of those insurers may be made available to the commissioner.

(b) The rules provided for in Subsection (1) may include:

(i) the data that [~~must~~] shall be reported by an insurer;

(ii) definitions of data elements;

(iii) the timing and frequency of data reporting by an insurer;

(iv) data quality standards;

(v) data edit and audit requirements;

(vi) data retention requirements;

(vii) reports to be generated; and

(viii) the timing of reports to be generated.

(c) Except for workers' compensation insurance under Section 31A-19a-404, an insurer may not be required to record or report its experience on a classification basis that is inconsistent with its own rating system.

(2) (a) The commissioner may designate one or more rate service organizations to assist the commissioner in gathering that experience and making compilations of the experience.

(b) The compilations developed under Subsection (2)(a) shall be made available to the public.

(3) The commissioner may make rules and plans for the interchange of data necessary for the application of rating plans.

(4) To further uniform administration of rate regulatory laws, the commissioner and every insurer and rate service organization may:

(a) exchange information and experience data with insurance supervisory officials, insurers, and rate service organizations in other states; and

(b) consult with the persons described in Subsection (4)(a) with respect to the application of rating systems and the reporting of statistical data.

Section 251. Section **31A-21-101** is amended to read:

31A-21-101. Scope of Chapters 21 and 22.

(1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22, Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:

(a) delivered or issued for delivery in this state;

(b) on property ordinarily located in this state;

(c) on persons residing in this state when the policy is issued; or

(d) on business operations in this state.

(2) This chapter and Chapter 22 do not apply to:

(a) an exemption provided in Section 31A-1-103;

(b) an insurance policy procured under Sections 31A-15-103 and 31A-15-104;

(c) an insurance policy on business operations in this state:

(i) if:

(A) the contract is negotiated primarily outside this state; and

(B) the operations in this state are incidental or subordinate to operations outside this state; and

(ii) except that insurance required by a Utah statute [~~must~~] shall conform to the statutory requirements; or

(d) other exemptions provided in this title.

(3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107(1) and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean marine and inland marine insurance.

(b) Section 31A-21-201 applies to inland marine insurance that is written according to manual rules or rating plans.

(4) A group or blanket policy is subject to this chapter and Chapter 22, except:

(a) a group or blanket policy outside the scope of this title under Subsection 31A-1-103(3)(h); and

(b) other exemptions provided under Subsection (5).

(5) The commissioner may by rule exempt any class of insurance contract or class of insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the Utah insureds, creditors, or the public would not be harmed by the exemption.

(6) Workers' compensation insurance, including that written by the Workers' Compensation Fund created under Chapter 33, Workers' Compensation Fund, is subject to this chapter and Chapter 22.

(7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable to either a policy or a contract is applicable to both.

Section 252. Section **31A-21-312** is amended to read:

31A-21-312. Notice and proof of loss.

(1) Every insurance policy shall provide that:

(a) when notice of loss is required separately from proof of loss, notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with particulars sufficient to identify the policy, is notice to the insurer; and

(b) failure to give any notice or file any proof of loss required by the policy within the time specified in the policy does not invalidate a claim made by the insured, if the insured shows that it was not reasonably possible to give the notice or file the proof of loss within the prescribed time and that notice was given or proof of loss filed as soon as reasonably possible.

(2) Failure to give notice or file proof of loss as required by Subsection (1)(b) does not bar recovery under the policy if the insurer fails to show it was prejudiced by the failure. This subsection may not be construed to extend the statute of limitations applicable under Section 31A-21-313.

(3) The insurer shall, on request, promptly furnish an insured any forms or instructions needed to make a proof of loss.

(4) As an alternative to giving notice directly under Subsection (1)(a), it is a sufficient service of notice or of proof of loss if a first class postage prepaid envelope addressed to the insurer and containing the proper notice or proof of loss is deposited in any United States post office within the time prescribed.

(5) The commissioner shall adopt rules dealing with notice of loss and proof of loss time limitations under insurance policies. Under Section 31A-21-202, the commissioner's express approval [~~must~~] shall be received before any contract clause requiring notice of loss or proof of loss in a manner inconsistent with the rule may be used in an insurance contract.

(6) The acknowledgment by the insurer of the receipt of notice, the furnishing of forms for filing proofs of loss, the acceptance of those proofs, or the investigation of any claim are not alone sufficient to waive any of the rights of the insurer in defense of any claim arising under the insurance policy.

Section 253. Section **31A-21-313** is amended to read:

31A-21-313. Limitation of actions.

(1) An action on a written policy or contract of first party insurance [~~must~~] shall be commenced within three years after the inception of the loss.

(2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on insurance policies.

(3) An insurance policy may not:

(a) limit the time for beginning an action on the policy to a time less than that authorized by statute;

(b) prescribe in what court an action may be brought on the policy; or

(c) provide that no action may be brought, subject to permissible arbitration provisions in contracts.

(4) Unless by verified complaint it is alleged that prejudice to the complainant will arise from a delay in bringing suit against an insurer, which prejudice is other than the delay itself, no action may be brought against an insurer on an insurance policy to compel payment under the policy until the earlier of:

(a) 60 days after proof of loss has been furnished as required under the policy;

(b) waiver by the insurer of proof of loss; or

(c) the insurer's denial of full payment.

(5) The period of limitation is tolled during the period in which the parties conduct an appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by the parties.

Section 254. Section **31A-21-403** is amended to read:

31A-21-403. Orders terminating effectiveness of policies.

Upon the commissioner's order, no mass marketed life or accident and health insurance issued by an insurer may continue to be effected on persons in this state. The commissioner may issue an order under this section only if [~~he~~] the commissioner finds, after a hearing, that the total charges for the insurance to the persons insured are unreasonable in relation to the benefits provided. The commissioner's findings under this section [~~must~~] shall be in writing. Orders under this section may direct the insurer to cease effecting the insurance until the total charges for the insurance are found by the commissioner to be reasonable in relation to the benefits provided.

Section 255. Section **31A-22-305** is amended to read:

31A-22-305. Uninsured motorist coverage.

(1) As used in this section, "covered persons" includes:

(a) the named insured;

(b) persons related to the named insured by blood, marriage, adoption, or guardianship,

who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

(c) any person occupying or using a motor vehicle:

(i) referred to in the policy; or

(ii) owned by a self-insured; and

(d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

(2) As used in this section, "uninsured motor vehicle" includes:

(a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or

(ii) (A) a motor vehicle covered with lower liability limits than required by Section 31A-22-304; and

(B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency;

(b) an unidentified motor vehicle that left the scene of an accident proximately caused by the motor vehicle operator;

(c) a motor vehicle covered by a liability policy, but coverage for an accident is disputed by the liability insurer for more than 60 days or continues to be disputed for more than 60 days; or

(d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of the motor vehicle is declared insolvent by a court of competent jurisdiction; and

(ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

(3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

(b) For new policies written on or after January 1, 2001, the limits of uninsured

motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form that:

(i) is filed with the department;

(ii) is provided by the insurer;

(iii) waives the higher coverage;

(iv) reasonably explains the purpose of uninsured motorist coverage; and

(v) discloses the additional premiums required to purchase uninsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) A self-insured, including a governmental entity, may elect to provide uninsured motorist coverage in an amount that is less than its maximum self-insured retention under Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from the chief financial officer or chief risk officer that declares the:

(i) self-insured entity's coverage level; and

(ii) process for filing an uninsured motorist claim.

(d) Uninsured motorist coverage may not be sold with limits that are less than the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(e) The acknowledgment under Subsection (3)(b) continues for that issuer of the uninsured motorist coverage until the insured, in writing, requests different uninsured motorist coverage from the insurer.

(f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of:

(A) the purpose of uninsured motorist coverage; and

(B) the costs associated with increasing the coverage in amounts up to and including

the maximum amount available by the insurer under the insured's motor vehicle policy.

(ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds that carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of uninsured motorist coverage.

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) (i) All persons, including governmental entities, that are engaged in the business of, or that accept payment for, transporting natural persons by motor vehicle, and all school districts that provide transportation services for their students, shall provide coverage for all motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least $25,000 per person and $500,000 per accident.

(ii) This coverage is secondary to any other insurance covering an injured covered person.

(c) Uninsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the workers' compensation insurance carrier;

(iii) may not be reduced by any benefits provided by workers' compensation insurance;

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole;

(v) may not be collected for bodily injury or death sustained by a person:

(A) while committing a violation of Section 41-1a-1314;

(B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Section 41-1a-1314; or

(C) while committing a felony; and

(vi) notwithstanding Subsection (4)(c)(v), may be recovered:

(A) for a person under 18 years of age who is injured within the scope of Subsection (4)(c)(v) but limited to medical and funeral expenses; or

(B) by a law enforcement officer as defined in Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.

(d) As used in this Subsection (4), "motor vehicle" has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the motor vehicle occupied by the covered person, the covered person [~~must~~] shall show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

(6) (a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under Subsection (7)(b)(ii).

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one motor vehicle that the covered person is the named insured or an insured family member.

(iii) This coverage shall be in addition to the coverage on the motor vehicle the covered person is occupying.

(iv) Neither the primary nor the secondary coverage may be set off against the other.

(c) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall

be secondary coverage.

(7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy. Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a motor vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which the person is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any one other policy in which they are described as a "covered person" as defined in Subsection (1):

(i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

(ii) except as provided in Subsection (7)(c), a covered person injured while occupying or using a motor vehicle that is not owned, leased, or furnished:

(A) to the covered person;

(B) to the covered person's spouse; or

(C) to the covered person's resident parent or resident sibling.

(c) (i) A covered person may recover benefits from no more than two additional policies, one additional policy from each parent's household if the covered person is:

(A) a dependent minor of parents who reside in separate households; and

(B) injured while occupying or using a motor vehicle that is not owned, leased, or furnished:

(I) to the covered person;

(II) to the covered person's resident parent; or

(III) to the covered person's resident sibling.

(ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of the damages that the limit of liability of each parent's policy of uninsured motorist coverage

bears to the total of both parents' uninsured coverage applicable to the accident.

(d) A covered person's recovery under any available policies may not exceed the full amount of damages.

(e) A covered person in Subsection (7)(b) is not barred against making subsequent elections if recovery is unavailable under previous elections.

(f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a single incident of loss under more than one insurance policy.

(ii) Except to the extent permitted by Subsection (6) and this Subsection (7), interpolicy stacking is prohibited for uninsured motorist coverage.

(8) (a) When a claim is brought by a named insured or a person described in Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the claimant may elect to resolve the claim:

(i) by submitting the claim to binding arbitration; or

(ii) through litigation.

(b) Unless otherwise provided in the policy under which uninsured benefits are claimed, the election provided in Subsection (8)(a) is available to the claimant only.

(c) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii), the claimant may not elect to resolve the claim through binding arbitration under this section without the written consent of the uninsured motorist carrier.

(d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

(ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

(iii) If the parties are unable to agree on a single arbitrator as required under Subsection (8)(d)(ii), the parties shall select a panel of three arbitrators.

(e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

(i) each side shall select one arbitrator; and

(ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional arbitrator to be included in the panel.

(f) Unless otherwise agreed to in writing:

(i) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (8)(d)(i); or

(ii) if an arbitration panel is selected under Subsection (8)(d)(iii):

(A) each party shall pay the fees and costs of the arbitrator selected by that party; and

(B) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (8)(e)(ii).

(g) Except as otherwise provided in this section or unless otherwise agreed to in writing by the parties, an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and 68 of the Utah Rules of Civil Procedure.

(i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.

(j) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.

(k) (i) The amount of an arbitration award may not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies, including applicable uninsured motorist umbrella policies.

(ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all applicable uninsured motorist policies, the arbitration award shall be reduced to an amount equal to the combined uninsured motorist policy limits of all applicable uninsured motorist policies.

(l) The arbitrator or arbitration panel may not decide the issues of coverage or extra-contractual damages, including:

(i) whether the claimant is a covered person;

(ii) whether the policy extends coverage to the loss; or

(iii) any allegations or claims asserting consequential damages or bad faith liability.

(m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or

class-representative basis.

(n) If the arbitrator or arbitration panel finds that the action was not brought, pursued, or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees and costs against the party that failed to bring, pursue, or defend the claim in good faith.

(o) An arbitration award issued under this section shall be the final resolution of all claims not excluded by Subsection (8)(l) between the parties unless:

(i) the award was procured by corruption, fraud, or other undue means; or

(ii) either party, within 20 days after service of the arbitration award:

(A) files a complaint requesting a trial de novo in the district court; and

(B) serves the nonmoving party with a copy of the complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

(p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

(q) (i) If the claimant, as the moving party in a trial de novo requested under Subsection (8)(o), does not obtain a verdict that is at least $5,000 and is at least 20% greater than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

(ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

(iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q) shall include:

(A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

(B) the costs of expert witnesses and depositions.

(iv) An award of costs under this Subsection (8)(q) may not exceed $2,500.

(r) For purposes of determining whether a party's verdict is greater or less than the

arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:

(i) was not fully disclosed in writing prior to the arbitration proceeding; or

(ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil Procedure.

(s) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith in accordance with Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

(t) Nothing in this section is intended to limit any claim under any other portion of an applicable insurance policy.

(u) If there are multiple uninsured motorist policies, as set forth in Subsection (7), the claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist carriers.

(9) (a) Within 30 days after a covered person elects to submit a claim for uninsured motorist benefits to binding arbitration or files litigation, the covered person shall provide to the uninsured motorist carrier:

(i) a written demand for payment of uninsured motorist coverage benefits, setting forth:

(A) the specific monetary amount of the demand; and

(B) the factual and legal basis and any supporting documentation for the demand;

(ii) a written statement under oath disclosing:

(A) (I) the names and last known addresses of all health care providers who have rendered health care services to the covered person that are material to the claims for which uninsured motorist benefits are sought for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised; and

(II) whether the covered person has seen other health care providers who have rendered health care services to the covered person, which the covered person claims are immaterial to

the claims for which uninsured motorist benefits are sought, for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised that have not been disclosed under Subsection (9)(a)(ii)(A)(I);

(B) (I) the names and last known addresses of all health insurers or other entities to whom the covered person has submitted claims for health care services or benefits material to the claims for which uninsured motorist benefits are sought, for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised; and

(II) whether the identity of any health insurers or other entities to whom the covered person has submitted claims for health care services or benefits, which the covered person claims are immaterial to the claims for which uninsured motorist benefits are sought, for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

(C) if lost wages, diminished earning capacity, or similar damages are claimed, all employers of the covered person for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised;

(D) other documents to reasonably support the claims being asserted; and

(E) all state and federal statutory lienholders including a statement as to whether the covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act, or if the claim is subject to any other state or federal statutory liens; and

(iii) signed authorizations to allow the uninsured motorist carrier to only obtain records and billings from the individuals or entities disclosed.

(b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary, the uninsured motorist carrier may:

(A) make a request for the disclosure of the identity of the health care providers or health care insurers; and

(B) make a request for authorizations to allow the uninsured motorist carrier to only obtain records and billings from the individuals or entities not disclosed.

(ii) If the covered person does not provide the requested information within 10 days:

(A) the covered person shall disclose, in writing, the legal or factual basis for the failure to disclose the health care providers or health care insurers; and

(B) either the covered person or the uninsured motorist carrier may request the arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be provided if the covered person has elected arbitration.

(iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of the dispute concerning the disclosure and production of records of the health care providers or health care insurers.

(c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice of filing litigation and the demand for payment of uninsured motorist benefits under Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

(A) provide a written response to the written demand for payment provided for in Subsection (9)(a)(i);

(B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed to the covered person; and

(C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act, or if the claim is subject to any other state or federal statutory liens, tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed to the covered person less:

(I) if the amount of the state or federal statutory lien is established, the amount of the lien; or

(II) if the amount of the state or federal statutory lien is not established, two times the amount of the medical expenses subject to the state or federal statutory lien until such time as the amount of the state or federal statutory lien is established.

(ii) If the amount tendered by the uninsured motorist carrier under Subsection (9)(c)(i) is the total amount of the uninsured motorist policy limits, the tendered amount shall be accepted by the covered person.

(d) A covered person who receives a written response from an uninsured motorist carrier as provided for in Subsection (9)(c)(i), may:

(i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all uninsured motorist claims; or

(ii) elect to:

(A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all uninsured motorist claims; and

(B) litigate or arbitrate the remaining claim.

(e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i) as partial payment of all uninsured motorist claims, the final award obtained through arbitration, litigation, or later settlement shall be reduced by any payment made by the uninsured motorist carrier under Subsection (9)(c)(i).

(f) In an arbitration proceeding on the remaining uninsured claims:

(i) the parties may not disclose to the arbitrator or arbitration panel the amount paid under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

(ii) the parties may not disclose the amount of the limits of uninsured motorist benefits provided by the policy.

(g) If the final award obtained through arbitration or litigation is greater than the average of the covered person's initial written demand for payment provided for in Subsection (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection (9)(c)(i), the uninsured motorist carrier shall pay:

(i) the final award obtained through arbitration or litigation, except that if the award

exceeds the policy limits of the subject uninsured motorist policy by more than $15,000, the amount shall be reduced to an amount equal to the policy limits plus $15,000; and

(ii) any of the following applicable costs:

(A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

(B) the arbitrator or arbitration panel's fee; and

(C) the reasonable costs of expert witnesses and depositions used in the presentation of evidence during arbitration or litigation.

(h) (i) The covered person shall provide an affidavit of costs within five days of an arbitration award.

(ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to which the uninsured motorist carrier objects.

(B) The objection shall be resolved by the arbitrator or arbitration panel.

(iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii) may not exceed $5,000.

(i) (i) A covered person shall disclose all material information, other than rebuttal evidence, as specified in Subsection (9)(a).

(ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

(j) This Subsection (9) does not limit any other cause of action that arose or may arise against the uninsured motorist carrier from the same dispute.

(k) The provisions of this Subsection (9) only apply to motor vehicle accidents that occur on or after March 30, 2010.

Section 256. Section **31A-22-408** is amended to read:

31A-22-408. Standard Nonforfeiture Law for Life Insurance.

(1) This section is known as the "Standard Nonforfeiture Law for Life Insurance." It does not apply to group life insurance.

(2) In the case of policies issued on or after July 1, 1961, no policy of life insurance, except as stated in Subsection (8), may be delivered or issued for delivery in this state unless it

contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified, and are essentially in compliance with Subsection (8):

(a) That, in the event of default in any premium payment, after premiums have been paid for at least one full year the company will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as is specified in this section. In lieu of that stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as is specified in this section.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default.

(d) That, if the policy shall have been paid by the completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value in the amount specified in this section.

(e) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or

premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy with the consent of the commissioner; provided, however, that the policy shall remain in full force and effect until the insurer has made the payment.

(3) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Subsection (2), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of

the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of: (a) the then present value of the adjusted premiums as defined in Subsections (5) and (6), corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy.

Provided, however, that for any policy issued on or after the operative date of Subsection (6)(d) as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

Provided, further, that for any family policy issued on or after the operative date of Subsection (6)(d) as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age 71, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse. Any cash surrender value available within 30 days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by Subsection (2) shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(5) (a) This Subsection (5)(a) does not apply to policies issued on or after the operative date of Subsection (6)(d) as defined therein. Except as provided in Subsection (5)(c), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of: (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2% of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount if the amount of insurance varies with duration of the policy; (iii) 40% of the adjusted premium for the first policy year; and (iv) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in Subsections (5)(a)(iii) and (iv), no adjusted premium shall be considered to exceed 4% of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be considered to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have

the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to: (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) of this [~~paragraph~~] Subsection (5)(c) being calculated separately and as specified in Subsections (5)(a) and (b) except that, for the purposes of (ii), (iii), and (iv) of Subsection (5)(a), the amount of insurance or equivalent uniform amount of insurance used in calculation of the adjusted premiums referred to in (ii) of this [~~paragraph~~] Subsection (5)(c) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i) of this [~~paragraph~~] Subsection (5)(c).

(d) Except as otherwise provided in Subsection (6), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding 3-1/2% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table. Provided,

further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(6) (a) This Subsection (6)(a) does not apply to ordinary policies issued on or after the operative date of Subsection (6)(d) as defined therein. In the case of ordinary policies issued on or after the operative date of Subsection (6)(a) as defined in Subsection (6)(b), all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest as specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued before June 1, 1973, 4% per annum for policies issued on or after May 31, 1973, and before April 2, 1980, and the rate of interest [~~shall not~~] may not exceed 5-1/2% per annum for policies issued after April 2, 1980, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding 6-1/2% per annum may be used, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(b) Any company may file with the commissioner a written notice of its election to comply with the provisions of Subsection (6)(a) after a specified date before January 1, 1966. After filing such notice, then upon such specified date, which is the operative date of Subsection (6)(a) for such company, this Subsection (6)(a) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such

election, the operative date of Subsection (6)(a) for such company is January 1, 1966.

(c) This Subsection (6)(c) does not apply to industrial policies issued after the operative date of Subsection (6)(d) as defined therein. In the case of industrial policies issued on or after the operative date of this Subsection (6)(c) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued before June 1, 1973, 4% per annum for policies issued after May 31, 1973, and before April 2, 1980, and 5-1/2% per annum for policies issued after April 2, 1980, except that for any single premium whole life or endowment insurance policy issued after April 2, 1980, a rate of interest not exceeding 6-1/2% per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

Any company may file with the commissioner a written notice of its election to comply with the provisions of this Subsection (6)(c) after a specified date before January 1, 1968. After filing such notice, then upon that specified date, which is the operative date of this Subsection (6) (c) for such company, this Subsection (6)(c) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this [~~paragraph~~] Subsection (6)(c) for such company shall be January 1, 1968.

(d) (i) This Subsection (6)(d) applies to all policies issued on or after the operative date of this subsection as defined herein. Except as provided in Subsection (6)(d)(vii), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform

percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of policy, of all adjusted premiums shall be equal to the sum of: (A) the then present value of the future guaranteed benefits provided for by the policy; (B) 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and (C) 125% of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in applying the percentage specified in (C), no nonforfeiture net level premium shall be considered to exceed 4% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(ii) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(iii) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(iv) Except as otherwise provided in Subsection (6)(d)(vii), the recalculated future

adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of: (I) the then present value of the then future guaranteed benefits provided for by the policy and (II) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(v) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of: (A) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (B) 125% of the increase, if positive, in the nonforfeiture net level premium.

(vi) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where

(A) equals the sum of:

(I) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(II) the present value of the increase in future guaranteed benefits provided for by the policy; and

(B) equals the present value of an annuity of one per annum payable on each

anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(vii) Notwithstanding any other provision of this Subsection (6)(d) to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(viii) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of: (A) the Commissioner's 1980 Standard Ordinary Mortality Table; or (B) at the election of the company for any one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection, for policies issued in that calendar year. Provided, however, that:

(I) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

(II) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(III) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(IV) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioner's 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(V) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(VI) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard, may be substituted for the Commissioner's 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioner's 1980 Extended Term Insurance Table.

(VII) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioner's 1961 Industrial Extended Term Insurance Table.

(ix) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearest [~~1/4~~] one-fourth of 1%.

(x) Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

(xi) After the effective date of this Subsection (6)(d), any company may, at any time before January 1, 1989, file with the commissioner a written notice of its election to comply with the provisions of this subsection with regard to any number of plans of insurance after a

specified date before January 1, 1989, which specified date shall be the operative date of this Subsection (6)(d) for the plan or plans, but if a company elects to make the provisions of this subsection operative before January 1, 1989, for fewer than all plans, the company [~~must~~] shall comply with rules adopted by the commissioner. There is no limit to the number of times this election may be made. If the company makes no such election, the operative date of this subsection for such company shall be January 1, 1989.

(7) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on the estimates of future experience, or in the case of any plan of life insurance which is of such nature that minimum values cannot be determined by the methods described in Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d) herein, then:

(a) the insurer shall demonstrate to the satisfaction of the commissioner [~~must be satisfied~~] that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d);

(b) the plan of life insurance shall satisfy the commissioner [~~must be satisfied~~] that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(c) the cash surrender values and paid-up nonforfeiture benefits provided by [~~such~~] the plan [~~must not~~] may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by rules adopted by the commissioner.

(8) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in Subsections (3), (4), (5), and (6) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up

additions, other than paid-up term additions, may not be less than the amounts used to provide such additions. Notwithstanding the provisions of Subsection (3), additional benefits payable: (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, if uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and (f) as other policy benefits additional to life insurance endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(9) This Subsection (9), in addition to all other applicable subsections of this section, applies to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than 2/10 of 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years, from the sum of: (a) the greater of zero and the basic cash value hereinafter specified, and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in Subsection (3) or (5),

whichever is applicable, shall be the same as are the effects specified in Subsection (3) or (5), whichever is applicable, on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in Subsection (5) or (6)(d), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) [~~must~~] shall be the same percentage for each policy year between the second policy anniversary and the later of: (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(b) [~~must~~] shall be such that no percentage after the later of the two policy anniversaries specified in Subsection (9)(a) may apply to fewer than five consecutive policy years.

Provided, that no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in Subsection (5) or Subsection (6)(d), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic value.

All adjusted premiums and present values referred to in this Subsection (9) shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this law. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum

amounts in Subsections (2), (3), (4), (5), (6), and (8). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as Subsections (8)(a) through (f) shall conform with the principles of this Subsection (9).

(10) This section does not apply to any of the following:

(a) reinsurance;

(b) group insurance;

(c) pure endowment;

(d) an annuity or reversionary annuity contract;

(e) a term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(f) a term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in Subsections (5) and (6), is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance, and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(g) a policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in Subsections (3), (4), (5), and (6) exceeds 2-1/2% of the amount of insurance at the beginning of the same policy year; or

(h) a policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this section, the age of expiry for a joint term insurance policy shall be the age of expiry of the oldest life.

(11) The commissioner may adopt rules interpreting, describing, and clarifying the

application of this nonforfeiture law to any form of life insurance for which the interpretation, description, or clarification is [~~deemed~~] considered necessary by the commissioner, including [~~but not limited to,~~] unusual and new forms of life insurance.

Section 257. Section **31A-22-610.5** is amended to read:

31A-22-610.5. Dependent coverage.

(1) As used in this section, "child" has the same meaning as defined in Section 78B-12-102.

(2) (a) Any individual or group accident and health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent may not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's 26th birthday and shall, upon application, provide coverage for all unmarried dependents up to age 26.

(b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included in the premium on the same basis as other dependent coverage.

(c) This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents.

(d) An individual health insurance policy, group health insurance policy, or health maintenance organization shall continue in force coverage for a dependent through the last day of the month in which the dependent ceases to be a dependent:

(i) if premiums are paid; and

(ii) notwithstanding Section 31A-8-402.3, 31A-8-402.5, 31A-22-721, 31A-30-107.1, or 31A-30-107.3.

(3) An individual or group accident and health insurance policy or health maintenance organization contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations, shall treat the dependent as if the coverage had been in force since it was terminated; if:

(a) the dependent has not reached the age of 26 by July 1, 1995;

(b) the dependent had coverage prior to July 1, 1994;

(c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age of the dependent; and

(d) the policy has not been terminated since the dependent's coverage was terminated.

(4) (a) When a parent is required by a court or administrative order to provide health insurance coverage for a child, an accident and health insurer may not deny enrollment of a child under the accident and health insurance plan of the child's parent on the grounds the child:

(i) was born out of wedlock and is entitled to coverage under Subsection (5);

(ii) was born out of wedlock and the custodial parent seeks enrollment for the child under the custodial parent's policy;

(iii) is not claimed as a dependent on the parent's federal tax return; or

(iv) does not reside with the parent or in the insurer's service area.

(b) A child enrolled as required under Subsection (4)(a)(iv) is subject to the terms of the accident and health insurance plan contract pertaining to services received outside of an insurer's service area. A health maintenance organization [~~must~~] shall comply with Section 31A-8-502.

(5) When a child has accident and health coverage through an insurer of a noncustodial parent, and when requested by the noncustodial or custodial parent, the insurer shall:

(a) provide information to the custodial parent as necessary for the child to obtain benefits through that coverage, but the insurer or employer, or the agents or employees of either of them, are not civilly or criminally liable for providing information in compliance with this Subsection (5)(a), whether the information is provided pursuant to a verbal or written request;

(b) permit the custodial parent or the service provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) make payments on claims submitted in accordance with Subsection (5)(b) directly to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid agency.

(6) When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(a) permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to an enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child's other parent, the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program; and

(c) (i) when the child is covered by an individual policy, not disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(A) the court or administrative order is no longer in effect; or

(B) the child is or will be enrolled in comparable accident and health coverage through another insurer which will take effect not later than the effective date of disenrollment; or

(ii) when the child is covered by a group policy, not disenroll or eliminate coverage of the child unless the employer is provided with satisfactory written evidence, which evidence is also provided to the insurer, that Subsection (9)(c)(i), (ii) or (iii) has happened.

(7) An insurer may not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for accident and health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

(8) Insurers may not reduce their coverage of pediatric vaccines below the benefit level in effect on May 1, 1993.

(9) When a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer shall:

(a) permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage of the child,

enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program;

(c) not disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(i) the court order is no longer in effect;

(ii) the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(iii) the employer has eliminated family health coverage for all of its employees; and

(d) withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer.

(10) An order issued under Section 62A-11-326.1 may be considered a "qualified medical support order" for the purpose of enrolling a dependent child in a group accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

(11) This section does not affect any insurer's ability to require as a precondition of any child being covered under any policy of insurance that:

(a) the parent continues to be eligible for coverage;

(b) the child shall be identified to the insurer with adequate information to comply with this section; and

(c) the premium shall be paid when due.

(12) The provisions of this section apply to employee welfare benefit plans as defined in Section 26-19-2.

(13) The commissioner shall adopt rules interpreting and implementing this section with regard to out-of-area court ordered dependent coverage.

Section 258. Section **31A-22-611** is amended to read:

31A-22-611. Coverage for children with a disability.

(1) For the purposes of this section:

(a) "Disabled dependent" means a child who is and continues to be both:

(i) unable to engage in substantial gainful employment to the degree that the child can achieve economic independence due to a medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months; and

(ii) chiefly dependent upon an insured for support and maintenance since the child reached the age specified in Subsection 31A-22-610.5(2).

[~~(c)~~] (b) "Mental impairment" means a mental or psychological disorder such as:

(i) mental retardation;

(ii) organic brain syndrome;

(iii) emotional or mental illness; or

(iv) specific learning disabilities as determined by the insurer.

[~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or disfigurement, or anatomical loss affecting one or more of the following body systems:

(i) neurological;

(ii) musculoskeletal;

(iii) special sense organs;

(iv) respiratory organs;

(v) speech organs;

(vi) cardiovascular;

(vii) reproductive;

(viii) digestive;

(ix) genito-urinary;

(x) hemic and lymphatic;

(xi) skin; or

(xii) endocrine.

(2) The insurer may require proof of the incapacity and dependency be furnished by the person insured under the policy within 30 days of the effective date or the date the child attains

the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the insurer may not require proof more often than annually after the two-year period immediately following attainment of the limiting age by the disabled dependent.

(3) Any individual or group accident and health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent shall, upon application, provide coverage for all unmarried disabled dependents who have been continuously covered, with no break of more than 63 days, under any accident and health insurance since the age specified in Subsection 31A-22-610.5(2).

(4) Every accident and health insurance policy or contract that provides coverage of a disabled dependent [~~shall not~~] may not terminate the policy due to an age limitation.

Section 259. Section **31A-22-613.5** is amended to read:

31A-22-613.5. Price and value comparisons of health insurance -- Basic Health Care Plan.

(1) (a) This section applies to all health benefit plans.

(b) Subsection (2) applies to:

(i) all health benefit plans; and

(ii) coverage offered to state employees under Subsection 49-20-202(1)(a).

(2) (a) The commissioner shall promote informed consumer behavior and responsible health benefit plans by requiring an insurer issuing a health benefit plan to:

(i) provide to all enrollees, prior to enrollment in the health benefit plan written disclosure of:

(A) restrictions or limitations on prescription drugs and biologics including:

(I) the use of a formulary;

(II) co-payments and deductibles for prescription drugs; and

(III) requirements for generic substitution;

(B) coverage limits under the plan; and

(C) any limitation or exclusion of coverage including:

(I) a limitation or exclusion for a secondary medical condition related to a limitation or

exclusion from coverage; and

(II) easily understood examples of a limitation or exclusion of coverage for a secondary medical condition; and

(ii) provide the commissioner with:

(A) the information described in Subsections 63M-1-2506(3) through (6) in the standardized electronic format required by Subsection 63M-1-2506(1); and

(B) information regarding insurer transparency in accordance with Subsection (5).

(b) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to the commissioner:

(i) upon commencement of operations in the state; and

(ii) anytime the insurer amends any of the following described in Subsection (2)(a)(i):

(A) treatment policies;

(B) practice standards;

(C) restrictions;

(D) coverage limits of the insurer's health benefit plan or health insurance policy; or

(E) limitations or exclusions of coverage including a limitation or exclusion for a secondary medical condition related to a limitation or exclusion of the insurer's health insurance plan.

(c) An insurer shall provide the enrollee with notice of an increase in costs for prescription drug coverage due to a change in benefit design under Subsection (2)(a)(i)(A):

(i) either:

(A) in writing; or

(B) on the insurer's website; and

(ii) at least 30 days prior to the date of the implementation of the increase in cost, or as soon as reasonably possible.

(d) If under Subsection (2)(a)(i)(A) a formulary is used, the insurer shall make available to prospective enrollees and maintain evidence of the fact of the disclosure of:

(i) the drugs included;

(ii) the patented drugs not included;

(iii) any conditions that exist as a precedent to coverage; and

(iv) any exclusion from coverage for secondary medical conditions that may result from the use of an excluded drug.

(e) (i) The department shall develop examples of limitations or exclusions of a secondary medical condition that an insurer may use under Subsection (2)(a)(i)(C).

(ii) Examples of a limitation or exclusion of coverage provided under Subsection (2)(a)(i)(C) or otherwise are for illustrative purposes only, and the failure of a particular fact situation to fall within the description of an example does not, by itself, support a finding of coverage.

(3) An insurer who offers a health benefit plan under Chapter 30, Individual, Small Employer, and Group Health Insurance Act, shall offer a basic health care plan subject to the open enrollment provisions of Chapter 30, Individual, Small Employer, and Group Health Insurance Act, that:

(a) is a federally qualified high deductible health plan;

(b) has a deductible that is within $250 of the lowest deductible that qualifies under a federally qualified high deductible health plan, as adjusted by federal law; and

(c) does not exceed an annual out of pocket maximum equal to three times the amount of the annual deductible.

(4) The commissioner:

(a) shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to the Health Insurance Exchange created under Section 63M-1-2504; and

(b) may request information from an insurer to verify the information submitted by the insurer under this section.

(5) The commissioner shall:

(a) convene a group of insurers, a member representing the Public Employees' Benefit and Insurance Program, consumers, and an organization described in Subsection 31A-22-614.6(3)(b), to develop information for consumers to compare health insurers and

health benefit plans on the Health Insurance Exchange, which shall include consideration of:

(i) the number and cost of an insurer's denied health claims;

(ii) the cost of denied claims that is transferred to providers;

(iii) the average out-of-pocket expenses incurred by participants in each health benefit plan that is offered by an insurer in the Health Insurance Exchange;

(iv) the relative efficiency and quality of claims administration and other administrative processes for each insurer offering plans in the Health Insurance Exchange; and

(v) consumer assessment of each insurer or health benefit plan;

(b) adopt an administrative rule that establishes:

(i) definition of terms;

(ii) the methodology for determining and comparing the insurer transparency information;

(iii) the data, and format of the data, that an insurer [~~must~~] shall submit to the department in order to facilitate the consumer comparison on the Health Insurance Exchange in accordance with Section 63M-1-2506; and

(iv) the dates on which the insurer [~~must~~] shall submit the data to the department in order for the department to transmit the data to the Health Insurance Exchange in accordance with Section 63M-1-2506; and

(c) implement the rules adopted under Subsection (5)(b) in a manner that protects the business confidentiality of the insurer.

Section 260. Section **31A-22-618.5** is amended to read:

31A-22-618.5. Health benefit plan offerings.

(1) The purpose of this section is to increase the range of health benefit plans available in the small group, small employer group, large group, and individual insurance markets.

(2) A health maintenance organization that is subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) shall offer to potential purchasers at least one health benefit plan that is subject to the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;

and

(b) may offer to a potential purchaser one or more health benefit plans that:

(i) are not subject to one or more of the following:

(A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

(B) the limitation on point of service products in Subsections 31A-8-408(3) through (6);

(C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in Section 31A-8-101; or

(D) coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate enacted after January 1, 2009; and

(ii) when offering a health plan under this section, provide coverage for an emergency medical condition as required by Section 31A-22-627 as follows:

(A) within the organization's service area, covered services shall include health care services from non-affiliated providers when medically necessary to stabilize an emergency medical condition; and

(B) outside the organization's service area, covered services shall include medically necessary health care services for the treatment of an emergency medical condition that are immediately required while the enrollee is outside the geographic limits of the organization's service area.

(3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that groups providers into the following reimbursement levels:

(i) tier one contracted providers;

(ii) tier two contracted providers who the insurer [~~must~~] shall reimburse at least 75% of tier one providers; and

(iii) one or more tiers of non-contracted providers; and

(b) notwithstanding Subsection 31A-22-617(9) may offer a health benefit plan that is not subject to Section 31A-22-618;

(c) beginning July 1, 2012, may offer products under Subsection (3)(a) that:

(i) are not subject to Subsection 31A-22-617(2); and

(ii) are subject to the reimbursement requirements in Section 31A-8-501;

(d) when offering a health plan under this Subsection (3), shall provide coverage of emergency care services as required by Section 31A-22-627 by providing coverage at a reimbursement level of at least 75% of tier one providers; and

(e) are not subject to coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that an insurer offers one plan that covers a mandate enacted after January 1, 2009.

(4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under Subsection (2)(b).

(5) (a) Any difference in price between a health benefit plan offered under Subsections (2)(a) and (b) shall be based on actuarially sound data.

(b) Any difference in price between a health benefit plan offered under Subsections (3)(a) and (b) shall be based on actuarially sound data.

(6) Nothing in this section limits the number of health benefit plans that an insurer may offer.

Section 261. Section **31A-22-625** is amended to read:

31A-22-625. Catastrophic coverage of mental health conditions.

(1) As used in this section:

(a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden on an insured for the evaluation and treatment of a mental health condition than for the evaluation and treatment of a physical health condition.

(ii) "Catastrophic mental health coverage" may include a restriction on cost sharing

factors, such as deductibles, copayments, or coinsurance, before reaching a maximum out-of-pocket limit.

(iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket limit for physical health conditions and another maximum out-of-pocket limit for mental health conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for physical health conditions.

(b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that pays for at least 50% of covered services for the diagnosis and treatment of mental health conditions.

(ii) "50/50 mental health coverage" may include a restriction on:

(A) episodic limits;

(B) inpatient or outpatient service limits; or

(C) maximum out-of-pocket limits.

(c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(d) (i) "Mental health condition" means a condition or disorder involving mental illness that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as periodically revised.

(ii) "Mental health condition" does not include the following when diagnosed as the primary or substantial reason or need for treatment:

(A) a marital or family problem;

(B) a social, occupational, religious, or other social maladjustment;

(C) a conduct disorder;

(D) a chronic adjustment disorder;

(E) a psychosexual disorder;

(F) a chronic organic brain syndrome;

(G) a personality disorder;

(H) a specific developmental disorder or learning disability; or

(I) mental retardation.

(e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer that it insures or seeks to insure a choice between catastrophic mental health coverage and 50/50 mental health coverage.

(b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Section 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) An insurer shall offer a large employer mental health and substance use disorder benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec. 300gg-5, and federal regulations adopted pursuant to that act.

(4) (a) An insurer may provide catastrophic mental health coverage to a small employer through a managed care organization or system in a manner consistent with Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the insurance policy uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider

unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a mental health condition [~~must~~] shall be rendered:

(i) by a mental health therapist as defined in Section 58-60-102; or

(ii) in a health care facility:

(A) licensed or otherwise authorized to provide mental health services pursuant to:

(I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

(B) that provides a program for the treatment of a mental health condition pursuant to a written plan.

(5) The commissioner may prohibit an insurance policy that provides mental health coverage in a manner that is inconsistent with this section.

(6) The commissioner shall:

(a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to ensure compliance with this section; and

(b) provide general figures on the percentage of insurance policies that include:

(i) no mental health coverage;

(ii) 50/50 mental health coverage;

(iii) catastrophic mental health coverage; and

(iv) coverage that exceeds the minimum requirements of this section.

(7) This section may not be construed as discouraging or otherwise preventing an insurer from providing mental health coverage in connection with an individual insurance policy.

(8) This section shall be repealed in accordance with Section 63I-1-231.

Section 262. Section **31A-22-634** is amended to read:

31A-22-634. Prohibition against certain use of Social Security number -- Exceptions -- Applicability of section.

(1) As used in this section:

(a) "Insurer" means:

(i) insurers governed by this part as described in Section 31A-22-600, and includes:

(A) a health maintenance organization; and

(B) a third-party administrator that is subject to this title; and

(ii) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health, dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(b) "Publicly display" or "publicly post" means to intentionally communicate or otherwise make available to the general public.

(2) An insurer or its subcontractors, including a pharmacy benefit manager, [~~shall not~~] may not do any of the following:

(a) publicly display or publicly post in any manner an individual's Social Security number; or

(b) print an individual's Social Security number on any card required for the individual to access products or services provided or covered by the insurer.

(3) This section does not prevent the collection, use, or release of a Social Security number as required by state or federal law, or the use of a Social Security number for internal verification or administrative purposes, or the release of a Social Security number to a health

care provider for claims administration purposes, or as part of the verification, eligibility, or payment process.

(4) If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, an insurer that complies with the federal law shall be considered in compliance with this section.

(5) An insurer [~~must~~] shall comply with the provisions of this section by July 1, 2004.

(6) (a) An insurer may obtain an extension for compliance with the requirements of this section in accordance with Subsections (6)(b) and (c).

(b) The request for extension:

(i) [~~must~~] shall be submitted in writing to the department prior to July 1, 2004; and

(ii) [~~must~~] shall provide an explanation as to why the insurer cannot comply with the requirements of this section by July 1, 2004.

(c) The commissioner shall grant a request for extension:

(i) for a period of time not to exceed March 1, 2005; and

(ii) if the commissioner finds that the explanation provided under Subsection (6)(b)(ii) is a reasonable explanation.

Section 263. Section **31A-22-636** is amended to read:

31A-22-636. Standardized health benefit plan cards.

(1) As used in this section, "insurer" means:

(a) an insurer governed by this part as described in Section 31A-22-600;

(b) a health maintenance organization governed by Chapter 8, Health Maintenance Organizations and Limited Health Benefit Plans;

(c) a third party administrator; and

(d) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health, medical, or conversion policy offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(2) In accordance with Subsection (3), an insurer [~~must~~] shall use and issue a health benefit plan information card for the insurer's enrollees upon the purchase or renewal of, or

enrollment in, a health benefit plan on or after July 1, 2010.

(3) The health benefit plan card shall include:

(a) the covered person's name;

(b) the name of the carrier and the carrier network name;

(c) the contact information for the carrier or health benefit plan administrator;

(d) general information regarding copayments and deductibles; and

(e) an indication of whether the health benefit plan is regulated by the state.

(4) (a) The commissioner shall work with the Department of Health, the Health Data Authority, health care providers groups, and with state and national organizations that are developing uniform standards for the electronic exchange of health insurance claims or uniform standards for the electronic exchange of clinical health records.

(b) When the commissioner determines that the groups described in Subsection (4)(a) have reached a consensus regarding the electronic technology and standards necessary to electronically exchange insurance enrollment and coverage information, the commissioner shall begin the rulemaking process under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adopt standardized electronic interchange technology.

(c) After rules are adopted under Subsection (4)(a), health care providers and their licensing boards under Title 58, Occupations and Professions, and health facilities licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, shall work together to implement the adoption of card swipe technology.

Section 264. Section **31A-22-637** is amended to read:

31A-22-637. Health care provider payment information -- Notice of admissions.

(1) For purposes of this section, "insurer" is as defined in Section 31A-22-636.

(2) (a) An insurer shall provide its health care providers who are under contract with the insurer access to current information necessary for the health care provider to determine:

(i) the effect of procedure codes on payment or compensation before a claim is submitted for a procedure;

(ii) the plans and carrier networks that the health care provider is subject to as part of

the contract with the carrier; and

(iii) in accordance with Subsection 31A-26-301.6(10)(f), the specific rate and terms under which the provider will be paid for health care services.

(b) The information required by Subsection (2)(a) may be provided through a website, and if requested by the health care provider, notice of the updated website shall be provided by the carrier.

(3) (a) An insurer [~~shall not~~] may not require a health care provider by contract, reimbursement procedure, or otherwise to notify the insurer of a hospital in-patient emergency admission within a period of time that is less than one business day of the hospital in-patient admission, if compliance with the notification requirement would result in notification by the health care provider on a weekend or federal holiday.

(b) Subsection (3)(a) does not prohibit the applicability or administration of other contract provisions between an insurer and a health care provider that require pre-authorization for scheduled in-patient admissions.

Section 265. Section **31A-22-716** is amended to read:

31A-22-716. Required provision for notice of termination.

(1) Every policy for group or blanket accident and health coverage issued or renewed after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior written notice of termination to each employee or group member and to notify each employee or group member of [~~his~~] the employee's or group member's rights to continue coverage upon termination.

(2) An insurer's monthly notice to the policyholder of premium payments due shall include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers shall provide a sample notice to the policyholder at least once a year.

(3) For the purpose of compliance with federal law and the Health Insurance Portability and Accountability Act, P.L. No. 104-191, 110 Stat. 1960, all health benefit plans, health insurers, and student health plans [~~must~~] shall provide a certificate of creditable coverage to each covered person upon the person's termination from the plan as soon as reasonably

possible.

Section 266. Section **31A-22-722.5** is amended to read:

31A-22-722.5. Mini-COBRA election -- American Recovery and Reinvestment Act.

(1) (a) If the provisions of Subsection (1)(b) are met, an individual has a right to contact the individual's employer or the insurer for the employer to participate in a transition period for mini-COBRA benefits under Section 31A-22-722 in accordance with Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.

(b) An individual has the right under Subsection (1)(a) if the individual:

(i) was involuntarily terminated from employment during the period of time identified in Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;

(ii) is eligible for COBRA premium assistance under Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;

(iii) was eligible for Utah mini-COBRA as provided in Section 31A-22-722 at the time of termination;

(iv) elected Utah mini-Cobra; and

(v) voluntarily dropped coverage, which includes dropping coverage through non-payment of premiums, between December 1, 2009 and February 1, 2010.

(2) (a) An individual or the employer of the individual shall contact the insurer and inform the insurer that the individual wants to maintain coverage and pay retroactive premiums under a transition period for mini-COBRA coverage in accordance with the provisions of Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.

(b) An individual or an employer on behalf of an eligible individual [~~must~~] shall submit the applicable forms and premiums for coverage under Subsection (1) to the insurer in accordance with the provisions of Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 11-5), as amended.

(3) An insured has the right to extend the employee's coverage under mini-cobra with the current employer's group policy beyond the 12 months to the period of time the insured is eligible to receive assistance in accordance with Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) as amended.

(4) An insurer that violates this section is subject to penalties in accordance with Section 31A-2-308.

Section 267. Section **31A-22-723** is amended to read:

31A-22-723. Group and blanket conversion coverage.

(1) Notwithstanding Subsection 31A-1-103(3)(f), and except as provided in Subsection (3), all policies of accident and health insurance offered on a group basis under this title, or Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act, shall provide that a person whose insurance under the group policy has been terminated is entitled to choose a converted individual policy in accordance with this section and Section 31A-22-724.

(2) A person who has lost group coverage may elect conversion coverage with the insurer that provided prior group coverage if the person:

(a) has been continuously covered for a period of three months by the group policy or the group's preceding policies immediately prior to termination;

(b) has exhausted either:

(i) Utah mini-COBRA coverage as required in Section 31A-22-722;

(ii) federal COBRA coverage; or

(iii) alternative coverage under Section 31A-22-724;

(c) has not acquired or is not covered under any other group coverage that covers all preexisting conditions, including maternity, if the coverage exists; and

(d) resides in the insurer's service area.

(3) This section does not apply if the person's prior group coverage:

(a) is a stand alone policy that only provides one of the following:

(i) catastrophic benefits;

(ii) aggregate stop loss benefits;

(iii) specific stop loss benefits;

(iv) benefits for specific diseases;

(v) accidental injuries only;

(vi) dental; or

(vii) vision;

(b) is an income replacement policy;

(c) was terminated because the insured:

(i) failed to pay any required individual contribution;

(ii) performed an act or practice that constitutes fraud in connection with the coverage; or

(iii) made intentional misrepresentation of material fact under the terms of coverage; or

(d) was terminated pursuant to Subsection 31A-8-402.3(2)(a), 31A-22-721(2)(a), or 31A-30-107(2)(a).

(4) (a) The employer shall provide written notification of the right to an individual conversion policy within 30 days of the insured's termination of coverage to:

(i) the terminated insured;

(ii) the ex-spouse; or

(iii) in the case of the death of the insured:

(A) the surviving spouse; and

(B) the guardian of any dependents, if different from a surviving spouse.

(b) The notification required by Subsection (4)(a) shall:

(i) be sent by first class mail;

(ii) contain the name, address, and telephone number of the insurer that will provide the conversion coverage; and

(iii) be sent to the insured's last-known address as shown on the records of the employer of:

(A) the insured;

(B) the ex-spouse; and

(C) if the policy terminates by reason of the death of the insured to:

(I) the surviving spouse; and

(II) the guardian of any dependents, if different from a surviving spouse.

(5) (a) An insurer is not required to issue a converted policy which provides benefits in excess of those provided under the group policy from which conversion is made.

(b) Except as provided in Subsection (5)(c), if the conversion is made from a health benefit plan, the employee or member shall be offered:

(i) at least the basic benefit plan as provided in Section 31A-22-613.5 through December 31, 2009; and

(ii) beginning January 1, 2010, only the alternative coverage as provided in Subsection 31A-22-724(1)(a).

(c) If the benefit levels required under Subsection (5)(b) exceed the benefit levels provided under the group policy, the conversion policy may offer benefits which are substantially similar to those provided under the group policy.

(6) Written application for the converted policy shall be made and the first premium paid to the insurer no later than 60 days after termination of the group accident and health insurance.

(7) The converted policy shall be issued without evidence of insurability.

(8) (a) The initial premium for the converted policy for the first 12 months and subsequent renewal premiums shall be determined in accordance with premium rates applicable to age, class of risk of the person, and the type and amount of insurance provided.

(b) The initial premium for the first 12 months may not be raised based on pregnancy of a covered insured.

(c) The premium for converted policies shall be payable monthly or quarterly as required by the insurer for the policy form and plan selected, unless another mode or premium payment is mutually agreed upon.

(9) The converted policy becomes effective at the time the insurance under the group policy terminates.

(10) (a) A newly issued converted policy covers the employee or the member and [~~must~~] shall also cover all dependents covered by the group policy at the date of termination of the group coverage.

(b) The only dependents that may be added after the policy has been issued are children and dependents as required by Section 31A-22-610 and Subsections 31A-22-610.5(6) and (7).

(c) At the option of the insurer, a separate converted policy may be issued to cover any dependent.

(11) (a) To the extent the group policy provided maternity benefits, the conversion policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group policy or the conversion policy until termination of a pregnancy that exists on the date of conversion if one of the following is pregnant on the date of the conversion:

(i) the insured;

(ii) a spouse of the insured; or

(iii) a dependent of the insured.

(b) The requirements of this Subsection (11) do not apply to a pregnancy that occurs after the date of conversion.

(12) Except as provided in this Subsection (12), a converted policy is renewable with respect to all individuals or dependents at the option of the insured. An insured may be terminated from a converted policy for the following reasons:

(a) a dependent is no longer eligible under the policy;

(b) for a network plan, if the individual no longer lives, resides, or works in:

(i) the insured's service area; or

(ii) the area for which the covered carrier is authorized to do business;

(c) the individual fails to pay premiums or contributions in accordance with the terms of the converted policy, including any timeliness requirements;

(d) the individual performs an act or practice that constitutes fraud in connection with the coverage;

(e) the individual makes an intentional misrepresentation of material fact under the

terms of the coverage; or

(f) coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(13) Conditions pertaining to health may not be used as a basis for classification under this section.

(14) An insurer is only required to offer a conversion policy that complies with Subsection 31A-22-724(1)(b) and, notwithstanding Sections 31A-8-402.5 and 31A-30-107.1, may discontinue any other conversion policy if:

(a) the discontinued conversion policy is discontinued uniformly without regard to any health related factor;

(b) any affected individual is provided with 90 days' advanced written notice of the discontinuation of the existing conversion policy;

(c) the policy holder is offered the insurer's conversion policy that complies with Subsection 31A-22-724(1)(b); and

(d) the policy holder is not re-rated for purposes of premium calculation.

Section 268. Section **31A-22-806** is amended to read:

31A-22-806. Provisions of policies and certificates.

(1) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance delivered to the debtor.

(2) Each of these types of policies or certificates shall, in addition to satisfying the requirements of Chapter 21, Insurance Contracts in General, set forth:

(a) the name and home office address of the insurer;

(b) the identity, by name or otherwise, of the persons insured;

(c) the rate, premium, or amount of payment by the debtor, if any, given separately for credit life insurance and credit accident and health insurance;

(d) a description of the amount, term, and coverage, including any exceptions, limitations, and restrictions;

(e) that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness; and

(f) that whenever the amount of insurance exceeds the unpaid indebtedness, that excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(3) Except as provided in Subsection (4), the policy or certificate shall be delivered to the debtor within 30 days after the date when the indebtedness is incurred.

(4) (a) If the policy or certificate is not delivered to the debtor within 30 days after the date the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance shall be delivered to the debtor.

(b) The application or the notice shall be signed by the debtor and shall set forth:

(i) the name and home office address of the insurer;

(ii) the name of the debtor;

(iii) the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and health insurance; and

(iv) the amount, term, and a brief description of the coverage provided.

(c) The copy of the application for or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate from the loan, sale, or other credit statement of account or instrument, unless the information required by this Subsection (4)(c) is prominently set forth therein.

(d) Upon acceptance of the insurance by the insurer and within 60 days after the later of the date on which the indebtedness is incurred or the date on which the credit life or credit accident and health policy was purchased, the insurer shall deliver the individual policy or group certificate of insurance to the debtor.

(e) The application or notice shall state that upon acceptance by the insurer, the insurance is effective as provided in Section 31A-22-805.

(5) If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the premium is less than that set forth

in the notice of proposed insurance, an appropriate refund shall be made.

(6) If a creditor makes available to the debtors more than one plan of credit life or credit accident and health insurance, all debtors [~~must~~] shall be informed of the plans applicable to the specific type of loan transaction for which the debtor is applying.

Section 269. Section **31A-22-1406** is amended to read:

31A-22-1406. Preexisting conditions.

(1) A long-term care insurance policy or certificate [~~shall not~~] may not use a definition of a preexisting condition which is more restrictive than the following: "Preexisting condition means a condition for which medical advice or treatment was recommended by or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person."

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six months following the effective date of coverage of an insured person.

(3) The commissioner may extend the preexisting condition periods provided in Subsections (1) and (2) as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(4) (a) The definition of preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant and from underwriting in accordance with that insurer's established underwriting standards on the basis of the answers on that application.

(b) Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in Subsection (2) expires.

(c) A long-term care insurance policy or certificate may not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical condition beyond the waiting period described in Subsection (2).

Section 270. Section **31A-22-1409** is amended to read:

31A-22-1409. Statements of coverage.

(1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the applicant to the document and its purpose.

(2) The commissioner may prescribe a standard format of an outline of coverage, including style, arrangement, and overall appearance, and the content.

(3) In the case of agent solicitations an agent [~~must~~] shall deliver the outline of coverage prior to the presentation of any application or enrollment form.

(4) In the case of direct response solicitations, the outline of coverage [~~must~~] shall be presented in conjunction with any application or enrollment form.

(5) An outline of coverage under this section shall include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium;

(d) a specific description of continuation or conversion provisions of group coverage;

(e) a statement that the outline of coverage is not a contract of insurance but a summary only and that the policy or group master policy contains governing contractual provisions;

(f) a description of the terms under which the policy or certificate may be returned and premium refunded;

(g) a brief description of the relationship of cost of care and benefits; and

(h) a statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified, long-term care insurance contract under Section 7702B(b), Internal Revenue Code.

(6) A certificate issued pursuant to a group long-term care insurance policy, which

policy is delivered or issued for delivery in this state, shall include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement that the group master policy determines governing contractual provisions; and

(d) a statement that any long-term care inflation protection option required by rule is not available under the policy.

(7) If an application for a long-term care contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than 30 days after the date of approval.

(8) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request. However, the insurer shall deliver the summary to the applicant no later than at the time of policy delivery regardless of request. In addition to complying with all applicable requirements, the summary shall also include:

(a) an explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(b) an illustration for each covered person of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits if any;

(c) any exclusions, reductions, and limitations on benefits of long-term care; and

(d) if applicable to the policy type, the summary shall also include:

(i) a disclosure of the effects of exercising other rights under the policy;

(ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

(iii) current and projected maximum lifetime benefits.

(9) The provisions of the policy summary required under Subsection (8) may be incorporated into:

(a) a basic illustration; or

(b) the life insurance policy summary required to be delivered in accordance with rule.

Section 271. Section **31A-23a-501** is amended to read:

31A-23a-501. Licensee compensation.

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee; or

(ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance.

(b) (i) "Compensation from an insurer or third party administrator" means commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:

(A) whether or not payable pursuant to a written agreement; and

(B) received from:

(I) an insurer; or

(II) a third party to the transaction for the sale or placement of insurance.

(ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:

(A) a fee or pass-through costs as provided in Subsection (1)(e); or

(B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.

(c) (i) "Customer" means:

(A) the person signing the application or submission for insurance; or

(B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.

(ii) "Customer" does not mean a person who is a participant or beneficiary of:

(A) an employee benefit plan; or

(B) a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.

(d) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.

(ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

(e) "Pass-through costs" include:

(i) costs for copying documents to be submitted to the insurer; and

(ii) bank costs for processing cash or credit card payments.

(2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure required by this Subsection (2) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure required by this Subsection (2) [~~must~~] shall be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

(d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

(3) (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:

(i) the producer and the insured have agreed on the producer's noncommission compensation; and

(ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.

(b) The disclosure required by this Subsection (3) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation and the existence and source of any other compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

(i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

(iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or

(iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.

(4) (a) For purposes of this Subsection (4), "producer" includes:

(i) a producer;

(ii) an affiliate of a producer; or

(iii) a consultant.

(b) Beginning January 1, 2010, in addition to any other disclosures required by this section, a producer may not accept or receive any compensation from an insurer or third party administrator for the placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to the customer's purchase of the health benefit plan the producer:

(i) except as provided in Subsection (4)(c), discloses in writing to the customer that the producer will receive compensation from the insurer or third party administrator for the placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure; and

(ii) except as provided in Subsection (4)(c):

(A) obtains the customer's signed acknowledgment that the disclosure under Subsection (4)(b)(i) was made to the customer; or

(B) (I) signs a statement that the disclosure required by Subsection (4)(b)(i) was made to the customer; and

(II) keeps the signed statement on file in the producer's office while the health benefit plan placed with the customer is in force.

(c) If the compensation to the producer from an insurer or third party administrator is for the renewal of a health benefit plan, once the producer has made an initial disclosure that complies with Subsection (4)(b), the producer does not have to disclose compensation received for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal period immediately following 36 months after the initial disclosure.

(d) (i) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit shall, while the health benefit plan placed with the customer is in force, maintain a copy of:

(A) the signed acknowledgment described in Subsection (4)(b)(i); or

(B) the signed statement described in Subsection (4)(b)(ii).

(ii) The standard application developed in accordance with Section 31A-22-635 shall

include a place for a producer to provide the disclosure required by this Subsection (4), and if completed, shall satisfy the requirement of Subsection (4)(d)(i).

(e) Subsection (4)(b)(ii) does not apply to:

(i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or

(ii) the placement of insurance in a secondary or residual market.

(5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or through that licensee or to charge a reasonable rate of interest upon past-due accounts.

(6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.

Section 272. Section **31A-23a-602** is amended to read:

31A-23a-602. Required contract provisions.

A person, firm, association, or corporation acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, the contract specifies the division of shared responsibilities. The written contract shall contain the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer at least monthly.

(3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent shall be

maintained. The insurer shall have access and the right to copy all accounts and records related to its business and shall have access to all books, bank accounts, and records of the managing general agent. The records shall be retained according to Section 31A-23a-412 and shall be kept in a form usable by the insurer and the commissioner.

(5) The contract may not be assigned in whole or part by the managing general agent.

(6) The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules. The contract shall contain appropriate underwriting guidelines including:

(a) the maximum annual premium volume;

(b) the basis of the rates to be charged;

(c) the types of risks which may be written;

(d) maximum limits of liability;

(e) applicable exclusions;

(f) territorial limitations;

(g) policy cancellation provisions; and

(h) the maximum policy period.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims [~~must~~] shall be reported to the company in a timely manner.

(b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the company;

(ii) involves a coverage dispute;

(iii) may exceed the managing general agent's claims settlement authority;

(iv) is open for more than six months; or

(v) is closed by payment the lesser of an amount set by the commissioner or an amount set by the company.

(c) All claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(8) Where electronic claims files are in existence, the contract [~~must~~] shall address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned for property insurance business, and five years after they are earned on casualty business, but not until the profits have been verified by a review conducted pursuant to Section 31A-23a-603.

(10) The managing general agent may not:

(a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) commit the insurer to participate in insurance or reinsurance syndicates;

(c) appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which [~~he~~] the producer is appointed;

(d) without prior approval of the insurer, pay or commit the insurer to pay a claim over

a specified amount, net of reinsurance, which [~~shall not~~] may not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer; if prior approval is given, a report [~~must~~] shall be promptly forwarded to the insurer;

(f) permit its subproducer to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer; or

(h) appoint a submanaging general agent.

Section 273. Section **31A-23a-702** is amended to read:

31A-23a-702. Minimum standards.

(1) This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding Subsection (1), this section does not apply if:

(a) the controlling producer places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance placed;

(b) the controlling producer accepts insurance placements only from nonaffiliated producers who are not controlling producers, and not directly from insureds; and

(c) the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(3) A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer that specifies the responsibilities of each party and that has been approved by the board of directors of the insurer. The contract

shall contain the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

(c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer at least monthly. The due date shall be fixed so that premiums or premium installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System FDIC, in accordance with applicable provisions of this title. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(f) The contract may not be assigned in whole or in part by the controlling producer.

(g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, and manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(h) The contract shall state the rates and terms of the controlling producer's

commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees may not be greater than those applicable to comparable business and services placed with the controlled insurer by producers other than controlling producers. For purposes of Subsections (3)(g) and (h), examples of "comparable business and services" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned, and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to Subsection (5).

(j) The contract shall include a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit to each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and [~~shall not~~] may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer. However, the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(4) Each controlled insurer shall have an audit committee of the board of directors.

The audit committee shall annually meet to review the adequacy of the insurer's loss reserves. The committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or any other independent loss reserve specialists acceptable to the commissioner.

(5) (a) In addition to any other required loss reserve certification, the controlled insurer shall file with the commissioner on April 1 of each year an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the commissioner. The opinion shall report loss ratios for each line of business written and shall attest to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the producer including losses incurred but not reported.

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Section 274. Section **31A-23a-806** is amended to read:

31A-23a-806. Prohibited acts.

(1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) The reinsurance intermediary-manager may not commit the reinsurer to participate in reinsurance syndicates.

(3) The reinsurance intermediary-manager may not appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which [~~he~~] the producer is appointed.

(4) The reinsurance intermediary-manager may not, without prior approval of the

reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

(5) The reinsurance intermediary-manager may not collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report [~~must~~] shall be promptly forwarded to the reinsurer.

(6) The reinsurance intermediary-manager may not jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.

(7) The reinsurance intermediary-manager may not appoint a subreinsurance intermediary-manager.

Section 275. Section **31A-27a-202** is amended to read:

31A-27a-202. Commencement of formal delinquency proceeding.

(1) A formal delinquency proceeding against a person shall be commenced by filing a petition in the name of the commissioner or department.

(2) (a) The petition required by Subsection (1):

(i) shall state:

(A) the grounds upon which the proceeding is based; and

(B) the relief requested; and

(ii) may include a request for restraining orders and injunctive relief as described in Section 31A-27a-108.

(b) Upon the filing of a petition, the commissioner shall forward a notice of the petition by first-class mail or electronic communication, as permitted by the receivership court, to the commissioners and guaranty associations in states in which the insurer did business.

(3) (a) A petition that requests injunctive relief:

(i) shall be verified by the commissioner or the commissioner's designee; and

(ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

(b) The commissioner shall provide only the notice the receivership court requires.

(4) If a temporary restraining order is requested:

(a) the receivership court may issue an initial order containing the relief requested;

(b) the order shall state the time and date of its issuance;

(c) the receivership court shall set a time and date for the return of summons:

(i) not more than 10 days from the time and date the initial order is issued; and

(ii) at which time the person proceeded against may appear before the receivership court for a summary hearing; and

(d) the order may not continue in effect beyond the time and date set for the return of summons, unless the receivership court expressly enters one or more orders extending the restraining order.

(5) (a) If no temporary restraining order is requested, the receivership court shall cause summons to be issued.

(b) The summons shall specify:

(i) a return date not more than 30 days after the day on which the summons is issued; and

(ii) that an answer [~~must~~] shall be filed at or before the return date.

Section 276. Section **31A-27a-205** is amended to read:

31A-27a-205. Decision and appeals.

(1) The receivership court shall enter judgment on the petition to commence formal delinquency proceeding within 15 days after the day on which the evidence is concluded.

(2) (a) An order entered pursuant to Subsection (1) is final when entered.

(b) An appeal shall be:

(i) handled on an expedited basis; and

(ii) taken within five days of the day on which judgment is entered.

(3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order has full force and effect and the receiver shall carry out the order's terms and this chapter.

(b) A request for reconsideration, review, or appeal, or posting of a bond, may not

dissolve or stay the judgment.

(4) (a) The following motions [~~must~~] shall first be presented to the receivership court:

(i) a motion for a stay of a judgment;

(ii) a motion for approval of a supersedes bond; or

(iii) a motion for other relief pending appeal.

(b) Except for a grant of a petition for rehabilitation which shall remain in effect pending a decision on appeal, during the pendency of an appeal the receivership court may do any of the following in accordance with the Utah Rules of Civil Procedure:

(i) suspend an order entered under Subsection (1);

(ii) modify an order entered under Subsection (1); or

(iii) make any other appropriate order governing the enforceability of an order entered under Subsection (1).

(c) The receivership court or an appellate court to which the matter is presented may condition any relief it grants under this Subsection (4) on the filing of a bond or other appropriate security with the receivership court.

(5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal regardless of the appeal's ultimate disposition.

(6) The reversal or modification on appeal of an order of rehabilitation or liquidation does not affect the validity of an act of the receiver pursuant to the order unless the order is stayed pending appeal.

Section 277. Section **31A-27a-502** is amended to read:

31A-27a-502. Recovery from affiliates.

(1) (a) If a receivership order is entered under this chapter, the receiver appointed under the receivership order may recover on behalf of the insurer from an affiliate as defined in Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years preceding the filing date of the delinquency proceedings.

(b) A person disputing that person's status as an affiliate [~~must~~] shall prove by clear and convincing evidence the person's nonaffiliate status.

(c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).

(2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is not recoverable if the recipient shows by a preponderance of the evidence that:

(a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;

(b) the department had notice to and approved the stock dividend; and

(c) the insurer did not know and could not reasonably have known that the stock dividend distribution to the affiliate might adversely affect the solvency of the insurer.

(3) The maximum amount recoverable under this section is the amount needed to pay all claims under the receivership:

(a) in excess of all other available recoverable assets; and

(b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to any receiver under similar laws of other states.

(4) (a) A person who is an affiliate at the time value is received is liable up to the amount of value received by the affiliate.

(b) If two or more affiliates are liable regarding the same value received, they are jointly and severally liable.

(5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one year, all affiliates at the time the value is received are jointly and severally liable for any resulting deficiency in the amount that would have been recovered from the nonpaying affiliate.

(6) This section does not enlarge the personal liability of a director under existing law.

(7) An action or proceeding under this section may not be commenced after the earlier of:

(a) six years after the day on which a receiver is appointed; or

(b) the day on which the receivership is terminated.

Section 278. Section **31A-27a-701** is amended to read:

31A-27a-701. Priority of distribution.

(1) (a) The priority of payment of distributions on unsecured claims shall be in

accordance with the order in which each class of claim is set forth in this section except as provided in Section 31A-27a-702.

(b) All claims in each class shall be paid in full or adequate funds retained for the claim's payment before a member of the next class receives payment.

(c) All claims within a class shall be paid substantially the same percentage.

(d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may not be established within a class.

(e) A claim by a shareholder, policyholder, or other creditor may not be permitted to circumvent the priority classes through the use of equitable remedies.

(2) The order of distribution of claims shall be as follows:

(a) a Class 1 claim, which:

(i) is a cost or expense of administration expressly approved or ratified by the liquidator, including the following:

(A) the actual and necessary costs of preserving or recovering the property of the insurer;

(B) reasonable compensation for all services rendered on behalf of the administrative supervisor or receiver;

(C) a necessary filing fee;

(D) the fees and mileage payable to a witness;

(E) an unsecured loan obtained by the receiver, which:

(I) unless its terms otherwise provide, has priority over all other costs of administration; and

(II) absent agreement to the contrary, shares pro rata with all other claims described in this Subsection (2)(a)(i)(E); and

(F) an expense approved by the rehabilitator of the insurer, if any, incurred in the course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and

(ii) except as expressly approved by the receiver, excludes any expense arising from a duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a

Class 7 claim;

(b) a Class 2 claim, which:

(i) is a reasonable expense of a guaranty association, including overhead, salaries, or other general administrative expenses allocable to the receivership such as:

(A) an administrative or claims handling expense;

(B) an expense in connection with arrangements for ongoing coverage; and

(C) in the case of a property and casualty guaranty association, a loss adjustment expense, including:

(I) an adjusting or other expense; and

(II) a defense or cost containment expense; and

(ii) excludes an expense incurred in the performance of duties under Section 31A-28-112 or similar duties under the statute governing a similar organization in another state;

(c) a Class 3 claim, which:

(i) is:

(A) a claim under a policy of insurance including a third party claim;

(B) a claim under an annuity contract or funding agreement;

(C) a claim under a nonassessable policy for unearned premium;

(D) a claim of an obligee and, subject to the discretion of the receiver, a completion contractor under a surety bond or surety undertaking, except for:

(I) a bail bond;

(II) a mortgage guaranty;

(III) a financial guaranty; or

(IV) other form of insurance offering protection against investment risk or warranties;

(E) a claim by a principal under a surety bond or surety undertaking for wrongful dissipation of collateral by the insurer or its agents;

(F) an indemnity payment on:

(I) a covered claim;

(II) unearned premium; or

(III) a payment for the continuation of coverage made by an entity responsible for the payment of a claim or continuation of coverage of an insolvent health maintenance organization;

(G) a claim incurred during the extension of coverage provided for in Sections 31A-27a-402 and 31A-27a-403; or

(H) all other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 2, including:

(I) an indemnity payment on covered claims; and

(II) in the case of a life and health guaranty association, a claim:

(Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities incurred on behalf of a covered claim or covered obligation of the insurer; and

(Bb) for the funds needed to reinsure the obligations described under this Subsection (2)(c)(i)(H)(II) with a solvent insurer; and

(ii) notwithstanding any other provision of this chapter, excludes the following which shall be paid under Class 7, except as provided in this section:

(A) an obligation of the insolvent insurer arising out of a reinsurance contract;

(B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant to a claims made policy after:

(I) the expiration date of the policy;

(II) the policy is replaced by the insured;

(III) the policy is canceled at the insured's request; or

(IV) the policy is canceled as provided in this chapter;

(C) an obligation to an insurer, insurance pool, or underwriting association and the insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is the named insured;

(D) an amount accrued as punitive or exemplary damages unless expressly covered

under the terms of the policy, which shall be paid as a claim in Class 9;

(E) a tort claim of any kind against the insurer;

(F) a claim against the insurer for bad faith or wrongful settlement practices; and

(G) a claim of a guaranty association for assessments not paid by the insurer, which claims shall be paid as claims in Class 7; and

(iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium claim on a policy, other than a reinsurance agreement;

(d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risk or warranties;

(e) a Class 5 claim, which is a claim of the federal government not included in Class 3 or 4;

(f) a Class 6 claim, which is a debt due an employee for services or benefits:

(i) to the extent that the expense:

(A) does not exceed the lesser of:

(I) $5,000; or

(II) two months' salary; and

(B) represents payment for services performed within one year before the day on which the initial order of receivership is issued; and

(ii) which priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees;

(g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1 through 6, including:

(i) a claim under a reinsurance contract;

(ii) a claim of a guaranty association for an assessment not paid by the insurer; and

(iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8 through 13;

(h) subject to Subsection (3), a Class 8 claim, which is:

(i) a claim of a state or local government, except a claim specifically classified

elsewhere in this section; or

(ii) a claim for services rendered and expenses incurred in opposing a formal delinquency proceeding;

(i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures, unless expressly covered under the terms of a policy of insurance;

(j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;

(k) subject to Subsection (4), a Class 11 claim, which is:

(i) a surplus note;

(ii) a capital note;

(iii) a contribution note;

(iv) a similar obligation;

(v) a premium refund on an assessable policy; or

(vi) any other claim specifically assigned to this class;

(l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court; and

(m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or other owner arising out of:

(i) the shareholder's or owner's capacity as shareholder or owner or any other capacity; and

(ii) except as the claim may be qualified in Class 3, 4, 7, or 12.

(3) To prove a claim described in Class 8, the claimant [~~must~~] shall show that:

(a) the insurer that is the subject of the delinquency proceeding incurred the fee or expense on the basis of the insurer's best knowledge, information, and belief:

(i) formed after reasonable inquiry indicating opposition is in the best interests of the insurer;

(ii) that is well grounded in fact; and

(iii) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(b) opposition is not pursued for any improper purpose, such as to harass, to cause unnecessary delay, or to cause needless increase in the cost of the litigation.

(4) (a) A claim in Class 11 is subject to a subordination agreement related to other claims in Class 11 that exist before the entry of a liquidation order.

(b) A claim in Class 13 is subject to a subordination agreement, related to other claims in Class 13 that exist before the entry of a liquidation order.

Section 279. Section **31A-30-107.3** is amended to read:

31A-30-107.3. Discontinuance and nonrenewal limitations and conditions.

(1) (a) A carrier that elects to discontinue offering a health benefit plan under Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e) is prohibited from writing new business:

(i) in the small employer and individual market in this state; and

(ii) for a period of five years beginning on the date of discontinuation of the last coverage that is discontinued.

(b) The prohibition described in Subsection (1)(a) may be waived if the commissioner finds that waiver is in the public interest:

(i) to promote competition; or

(ii) to resolve inequity in the marketplace.

(2) (a) If the Comprehensive Health Insurance Pool as set forth under Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if enrollment is capped or suspended, an individual carrier:

(i) may elect to discontinue offering new individual health benefit plans, except to HIPAA eligibles, but [~~must~~] shall keep existing individual health benefit plans in effect, except those individual plans that are not renewed under the provisions of Subsection 31A-30-107(2) or 31A-30-107.1(2);

(ii) may elect to continue to offer new individual and small employer health benefit plans; or

(iii) may elect to discontinue all of the covered carrier's health benefit plans in the individual or small group market under the provisions of Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e).

(b) A carrier that makes an election under Subsection (2)(a)(i):

(i) is prohibited from writing new business:

(A) in the individual market in this state; and

(B) for a period of five years beginning on the date of discontinuation;

(ii) may continue to write new business in the small employer market; and

(iii) [~~must~~] shall provide written notice of the election under Subsection (2)(a)(i) within two calendar days of the election to the Utah Insurance Department.

(c) The prohibition described in Subsection (2)(b)(i) may be waived if the commissioner finds that waiver is in the public interest:

(i) to promote competition; or

(ii) to resolve inequity in the marketplace.

(d) A carrier that makes an election under Subsection (2)(a)(iii) is subject to the provisions of Subsection (1).

(3) If a carrier is doing business in one established geographic service area of the state, Sections 31A-30-107 and 31A-30-107.1 apply only to the carrier's operations in that geographic service area.

(4) If a small employer employs less than two eligible employees, a carrier may not discontinue or not renew the health benefit plan until the first renewal date following the beginning of a new plan year, even if the carrier knows as of the beginning of the plan year that the employer no longer has at least two current employees.

Section 280. Section **31A-30-107.5** is amended to read:

31A-30-107.5. Preexisting condition exclusion -- Condition-specific exclusion riders -- Limitation periods.

(1) A health benefit plan may impose a preexisting condition exclusion only if the provision complies with Subsection 31A-22-605.1(4).

(2) (a) In accordance with Subsection (2)(b), an individual carrier:

(i) may, when the individual carrier and the insured mutually agree in writing to a condition-specific exclusion rider, offer to issue an individual policy that excludes all treatment and prescription drugs related to:

(A) a specific physical condition;

(B) a specific disease or disorder; and

(C) any specific or class of prescription drugs; and

(ii) may offer an individual policy that may establish separate cost sharing requirements including, deductibles and maximum limits that are specific to covered services and supplies, including drugs, when utilized for the treatment and care of the conditions, diseases, or disorders listed in Subsection (2)(b).

(b) (i) Except as provided in Section 31A-22-630 and Subsection (2)(b)(ii), the following may be the subject of a condition-specific exclusion rider:

(A) conditions, diseases, and disorders of the bones or joints of the ankle, arm, elbow, fingers, foot, hand, hip, knee, leg, mandible, mastoid, wrist, shoulder, spine, and toes, including bone spurs, bunions, carpal tunnel syndrome, club foot, cubital tunnel syndrome, hammertoe, syndactylism, and treatment and prosthetic devices related to amputation;

(B) anal fistula, anal fissure, anal stricture, breast implants, breast reduction, chronic cystitis, chronic prostatitis, cystocele, rectocele, enuresis, hemorrhoids, hydrocele, hypospadius, interstitial cystitis, kidney stones, uterine leiomyoma, varicocele, spermatocele, endometriosis;

(C) allergic rhinitis, nonallergic rhinitis, hay fever, dust allergies, pollen allergies, deviated nasal septum, and sinus related conditions, diseases, and disorders;

(D) hemangioma, keloids, scar revisions, and other skin related conditions, diseases, and disorders;

(E) goiter and other thyroid related conditions, diseases, or disorders;

(F) cataracts, cornea transplant, detached retina, glaucoma, keratoconus, macular degeneration, strabismus and other eye related conditions, diseases, and disorders;

(G) otitis media, cholesteatoma, otosclerosis, and other internal/external ear conditions,

diseases, and disorders;

(H) Baker's cyst, ganglion cyst;

(I) abdominoplasty, esophageal reflux, hernia, Meniere's disease, migraines, TIC Doulourex, varicose veins, vestibular disorders;

(J) sleep disorders and speech disorders; and

(K) any specific or class of prescription drugs.

(ii) Subsection (2)(b)(i) does not apply:

(A) for the treatment of asthma; or

(B) when the condition is due to cancer.

(iii) A condition-specific exclusion rider:

(A) shall be limited to the excluded condition, disease, or disorder and any complications from that condition, disease, or disorder;

(B) may not extend to any secondary medical condition; and

(C) [~~must~~] shall include the following informed consent paragraph: "I agree by signing below, to the terms of this rider, which excludes coverage for all treatment, including medications, related to the specific condition(s), disease(s), and/or disorder(s) stated herein and that if treatment or medications are received that I have the responsibility for payment for those services and items. I further understand that this rider does not extend to any secondary medical condition, disease, or disorder."

(c) If an individual carrier issues a condition-specific exclusion rider, the condition-specific exclusion rider shall remain in effect for the duration of the policy at the individual carrier's option.

(d) An individual policy issued in accordance with this Subsection (2) is not subject to Subsection 31A-26-301.6(7).

(3) Notwithstanding the other provisions of this section, a health benefit plan may impose a limitation period if:

(a) each policy that imposes a limitation period under the health benefit plan specifies the physical condition, disease, or disorder that is excluded from coverage during the limitation

period;

(b) the limitation period does not exceed 12 months;

(c) the limitation period is applied uniformly; and

(d) the limitation period is reduced in compliance with Subsections 31A-22-605.1(4)(a) and (4)(b).

Section 281. Section **31A-30-110** is amended to read:

31A-30-110. Individual enrollment cap.

(1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.

(2) The commissioner shall raise the individual enrollment cap by .5% at the later of the following dates:

(a) six months from the last increase in the individual enrollment cap; or

(b) the date when CCI/TI is greater than .90, where:

(i) "CCI" is the total individual coverage count for all carriers certifying that their uninsurable percentage has reached the individual enrollment cap; and

(ii) "TI" is the total individual coverage count for all carriers.

(3) The commissioner may establish a minimum number of uninsurable individuals that a carrier entering the market who is subject to this chapter [~~must~~] shall accept under the individual enrollment provisions of this chapter.

(4) Beginning July 1, 1997, an individual carrier may decline to accept individuals applying for individual enrollment under Subsection 31A-30-108(3), other than individuals applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:

(a) the uninsurable percentage for that carrier equals or exceeds the cap established in Subsection (1); and

(b) the covered carrier has certified on forms provided by the commissioner that its uninsurable percentage equals or exceeds the individual enrollment cap.

(5) The department may audit a carrier's records to verify whether the carrier's uninsurable classification meets industry standards for underwriting criteria as established by the commissioner in accordance with Subsection 31A-30-106(1)(I).

(6) (a) If the commissioner determines that individual enrollment is causing a substantial adverse effect on premiums, enrollment, or experience, the commissioner may suspend, limit, or delay further individual enrollment for up to 12 months.

(b) The commissioner shall adopt rules to establish a uniform methodology for calculating and reporting loss ratios for individual policies for determining whether the individual enrollment provisions of Section 31A-30-108 should be waived for an individual carrier experiencing significant and adverse financial impact as a result of complying with those provisions.

Section 282. Section **31A-30-206** is amended to read:

31A-30-206. Minimum participation and contribution levels -- Premium payments.

An insurer who offers a health benefit plan for which an employer has established a defined contribution arrangement under the provisions of this part:

(1) [~~shall not~~] may not:

(a) establish an employer minimum contribution level for the health benefit plan premium under Section 31A-30-112, or any other law; or

(b) discontinue or non-renew a policy under Subsection 31A-30-107(4) for failure to maintain a minimum employer contribution level;

(2) shall accept premium payments for an enrollee from multiple sources through the Internet portal, including:

(a) government assistance programs;

(b) contributions from a Section 125 Cafeteria plan, a health reimbursement arrangement, or other qualified mechanism for pre-tax payments established by any employer of the enrollee;

(c) contributions from a Section 125 Cafeteria plan, a health reimbursement arrangement, or other qualified mechanism for pre-tax payments established by an employer of a spouse or dependent of the enrollee; and

(d) contributions from private sources of premium assistance; and

(3) may require, as a condition of coverage, a minimum participation level for eligible employees of an employer, which for purposes of the defined contribution arrangement market may not exceed 75% participation.

Section 283. Section **31A-34-104** is amended to read:

31A-34-104. Alliance -- Required license.

(1) A person [~~must~~] shall be licensed as an alliance pursuant to this chapter to directly or indirectly make available or otherwise arrange for health insurance through multiple unaffiliated insurers through the use of coordinated actuarial models, coordinated underwriting, or coordinated marketing methodologies.

(2) (a) A person may not hold itself out as a health insurance purchasing alliance, purchasing alliance, health insurance purchasing cooperative, purchasing cooperative, or otherwise use a similar name unless licensed by the commissioner as an alliance.

(b) Notwithstanding Subsection (2)(a), a person may hold itself out as a voluntary health insurance purchasing association without being licensed by the commissioner as provided in Section 31A-34-105.

(3) To apply for licensure as an alliance, a person shall complete an application in a form designated by the commissioner and file it with the commissioner, together with the applicable filing fees determined by the commissioner under Section 63J-1-504.

Section 284. Section **31A-34-107** is amended to read:

31A-34-107. Directors, trustees, and officers.

(1) To ensure representation of consumer interests, at least 25% of the board [~~must~~] shall be enrollees, chosen under a plan proposed by the alliance and approved by the commissioner.

(2) Those who sit as directors or trustees on the board or as officers or principals of the corporation or trust [~~must~~] shall be trustworthy and collectively have the competence and experience to carry out the activities of the alliance.

Section 285. Section **31A-36-107** is amended to read:

31A-36-107. Examinations and retention of records.

(1) The commissioner may conduct an examination of a life settlement provider or life settlement producer in accordance with Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and 31A-2-205.

(2) A life settlement provider or life settlement producer shall retain for five years copies of:

(a) the following records, whether proposed, offered, or executed, from the later of the date of the proposal, offer, or execution:

(i) contracts;

(ii) purchase agreements;

(iii) underwriting documents;

(iv) policy forms; and

(v) applications;

(b) checks, drafts, and other evidence or documentation relating to the payment, transfer, or release of money, from the date of the transaction; and

(c) records and documents related to the requirements of this chapter.

(3) This section does not relieve a person of the obligation to produce a document described in Subsection (2) to the commissioner after the expiration of the relevant period if the person has retained the document.

(4) A record required by this section to be retained:

(a) [~~must~~] shall be legible and complete; and

(b) may be retained in any form or by any process that accurately reproduces or is a durable medium for the reproduction of the record.

(5) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter. This Subsection (5) does not automatically preclude an examiner from being:

(a) an owner;

(b) an insured in a settled policy; or

(c) a beneficiary in a policy that is proposed to be settled.

(6) (a) An examinee under this section shall reimburse the cost of an examination to the department consistent with Section 31A-2-205.

(b) Notwithstanding Subsection (6)(a), an individual life settlement producer is not subject to Section 31A-2-205.

Section 286. Section **31A-36-109** is amended to read:

31A-36-109. General requirements.

(1) If a life settlement provider transfers ownership or changes the beneficiary of a settled policy, the life settlement provider shall inform the insured of the transfer or change within 20 calendar days.

(2) A life settlement provider that enters a life settlement shall first obtain:

(a) if the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter a life settlement;

(b) a witnessed document in which the owner represents that:

(i) the owner has a full and complete understanding of the life settlement and the benefits of the policy;

(ii) the owner has entered the life settlement freely and voluntarily; and

(iii) if applicable, the insured is terminally ill or chronically ill and that the illness was diagnosed after the policy was issued; and

(c) a document in which the insured consents to the release of the insured's medical records to:

(i) a life settlement provider;

(ii) a life settlement producer; and

(iii) the insurer that issued the policy covering the insured.

(3) Within 20 calendar days after an owner executes documents necessary to transfer rights under a policy, or enters into an agreement in any form, express or implied, to settle the policy, the life settlement provider shall give written notice to the issuer of the policy that the

policy has or will become settled. The notice [~~must~~] shall be accompanied by a copy of the documents required by Subsection (4).

(4) The life settlement provider shall deliver a copy of the following to the insurer that issued the policy that is the subject of the life settlement:

(a) the medical release required under Subsection (2)(c);

(b) a copy of the owner's application for the life settlement; and

(c) the notice required under Subsection (3).

(5) (a) An insurer shall complete and return a request for verification of coverage not later than 30 calendar days after the day on which the request is received. In its response, the insurer shall indicate whether the insurer intends to pursue an investigation regarding the validity of the insurance contract.

(b) An insurer may not require that a person making a request under Subsection (5)(a) provide the insurer additional information in order for the insurer to comply with Subsection (5)(a), if the person provides the insurer:

(i) a request for verification of coverage made on an original, facsimile, or electronic copy of a verification of coverage for a policy document adopted by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) an authorization that accompanies the verification described in Subsection (5)(b)(i) signed by the owner.

(6) Medical information solicited or obtained by a life settlement provider or life settlement producer is subject to:

(a) other laws of this state relating to the confidentiality of the information; and

(b) a rule relating to privacy of medical or personal information promulgated by the commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. Sec. 6805.

(7) (a) (i) A life settlement entered into in this state [~~must~~] shall reserve to the owner an unconditional right to rescind the life settlement within the rescission period provided for in this Subsection (7).

(ii) The rescission period ends 15 calendar days after the day on which the owner receives the proceeds of the life settlement.

(iii) Rescission by an owner may be conditioned on the owner giving notice and repaying to the life settlement provider within the rescission period all proceeds of the life settlement and any premium, loan, or loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement.

(b) If the insured dies during the rescission period, the life settlement is considered to be rescinded if the proceeds, premiums, loans, and loan interest paid by the life settlement provider or life settlement purchaser are repaid within 60 calendar days of the day on which the insured dies.

(8) (a) Contact with an insured to determine the health status of the insured after a life settlement may be made only by a life settlement provider or life settlement producer that is licensed in this state, or its authorized representative, and no more than:

(i) once every three months if the insured has a life expectancy of one year or more; or

(ii) once every month if the insured has a life expectancy of less than one year.

(b) A life settlement provider or life settlement producer shall explain the procedure for the contacts allowed under this Subsection (8) to the owner when the application for the life settlement is signed by all participants in the life settlement.

(c) The limitations of this Subsection (8) do not apply to contacts for purposes other than determining health status.

(d) A life settlement provider or life settlement producer is responsible for the acts of its authorized representative in violation of this Subsection (8).

(9) The trustee of a related provider trust [~~must~~] shall agree in writing with the life settlement provider that:

(a) the life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and

(b) the trustee will make all records and files related to life settlements available to the commissioner as if those records and files were maintained directly by the life settlement

provider.

(10) Regardless of the method of compensation, a life settlement producer:

(a) represents only the owner; and

(b) owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner.

Section 287. Section **31A-36-110** is amended to read:

31A-36-110. Payment and document requirements.

(1) (a) A life settlement provider shall instruct the owner to send the executed documents required to effect the change in ownership or assignment or change of beneficiary of the affected policy to a designated independent escrow agent.

(b) Within three business days after the day on which the escrow agent receives the documents, or within three business days after the day on which the life settlement provider receives the documents if by mistake they are sent directly to the life settlement provider, the life settlement provider shall deposit the proceeds of the life settlement into an escrow or trust account of the escrow agent in a federally insured depository institution.

(2) (a) Upon completion of the requirements of Subsection (1), the escrow agent shall deliver the original documents executed by the owner to:

(i) the life settlement provider; or

(ii) a related provider trust or other designated representative of the life settlement provider.

(b) Upon the life settlement provider's receipt from the insurer of an acknowledgment of the change in ownership or assignment or change of beneficiary of the affected policy, the life settlement provider shall instruct the escrow agent to pay the proceeds of the life settlement to the owner.

(3) Payment to the owner [~~must~~] shall be made within three business days after the day on which the life settlement provider receives the acknowledgment from the insurer. Failure to make the payment within that time makes the life settlement voidable by the owner for lack of consideration until payment is tendered to and accepted by the owner.

Section 288. Section **31A-36-112** is amended to read:

31A-36-112. Advertising regulations.

(1) (a) A life settlement provider or life settlement producer shall establish and continuously maintain a system of control over the content, form, and method of dissemination of advertisements of the life settlement provider's or life settlement producer's contracts and services.

(b) An advertisement is the responsibility of the life settlement provider or life settlement producer as well as the person that creates or presents the advertisement.

(c) A system of control [~~must~~] shall include at least annual notification to persons authorized by the life settlement provider or life settlement producer that disseminate advertisements of the requirements and procedures for approval before use of any advertisements not furnished by the life settlement provider or life settlement producer.

(2) An advertisement [~~must~~] shall be truthful and not misleading in fact or by implication, as determined by the commissioner from the overall impression it may reasonably be expected to create upon a person of average education or intelligence in the segment of the public to which it is directed.

(3) A false or misleading statement is not remedied by:

(a) making a life settlement available for inspection before it is consummated; or

(b) offering to refund payment if the owner is not satisfied within the period prescribed in Subsection 31A-36-109(7).

Section 289. Section **31A-36-114** is amended to read:

31A-36-114. Reporting of fraud and immunity.

(1) A person engaged in the business of life settlements that knows or reasonably suspects that a violation of Section 31A-36-113 is being, has been, or will be committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(2) A person not engaged in the business of life settlements that knows or reasonably believes that a violation of Section 31A-36-113 is being, has been, or will be committed may

furnish to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(3) Except as provided in Subsection (4), a person furnishing information of the kind described in this section is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner or the commissioner's employees, agents, or representatives;

(b) federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(c) another person involved in the prevention or detection of violations of Section 31A-36-113 or that person's employees, agents, or representatives;

(d) the following organizations or their employees, agents, or representatives:

(i) the National Association of Insurance Commissioners;

(ii) the Financial Industry Regulatory Authority;

(iii) the North American Securities Administrators Association; or

(iv) another regulatory body overseeing life insurance, life settlements, securities, or investment fraud; or

(e) the insurer that issued the policy concerned in the information.

(4) The immunity provided in Subsection (3) does not extend to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a violation of this section, the plaintiff [~~must~~] shall plead specifically that the defendant acted with actual malice.

(5) A person furnishing information as identified in Subsection (3) is entitled to an award of attorney fees and costs if:

(a) the person is the prevailing party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter; and

(b) the action did not have a reasonable basis in law or fact at the time it was initiated.

(6) This section does not supplant or modify any other privilege or immunity at common law or under another statute.

Section 290. Section **31A-37-105** is amended to read:

31A-37-105. Operation of a branch captive insurance company.

Except as otherwise provided in this chapter, a branch captive insurance company [~~must~~] shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner under Section 31A-37-106.

Section 291. Section **31A-37-106** is amended to read:

31A-37-106. Authority to make rules -- Authority to issue orders.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to:

(a) determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company;

(b) require a statement, document, or information that a captive insurance company [~~must~~] shall provide to the commissioner to obtain a certificate of authority;

(c) determine a factor a captive insurance company shall provide evidence of under Subsection 31A-37-202(4)(c);

(d) prescribe one or more capital requirements for a captive insurance company in addition to those required under Section 31A-37-204 based on the type, volume, and nature of insurance business transacted by the captive insurance company;

(e) establish:

(i) the amount of capital or surplus required to be retained under Subsection 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance company; or

(ii) a formula to determine the amount described in Subsection 31A-37-205(4);

(f) waive or modify a requirement for public notice and hearing for the following by a captive insurance company:

(i) merger;

(ii) consolidation;

(iii) conversion;

(iv) mutualization; or

(v) redomestication;

(g) approve the use of one or more reliable methods of valuation and rating for:

(i) an association captive insurance company;

(ii) a sponsored captive insurance company; or

(iii) an industrial insured group;

(h) prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company;

(i) determine the financial reports a sponsored captive insurance company shall annually file with the commissioner;

(j) prescribe the required forms and reports under Section 31A-37-501; and

(k) establish one or more standards to ensure that:

(i) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by a pure captive insurance company:

(A) a parent; or

(B) an affiliated company of a parent; or

(ii) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by an industrial insured captive insurance company:

(A) an industrial insured; or

(B) an affiliated company of the industrial insured.

(2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules authorized under Subsection (1)(k), the commissioner may by temporary order grant authority to insure risks to:

(a) a pure captive insurance company; or

(b) an industrial insured captive insurance company.

(3) The commissioner may issue prohibitory, mandatory, and other orders relating to a

captive insurance company as necessary to enable the commissioner to secure compliance with this chapter.

Section 292. Section **31A-37-202** is amended to read:

31A-37-202. Permissive areas of insurance.

(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.

(b) Notwithstanding Subsection (1)(a):

(i) a pure captive insurance company may not insure a risk other than a risk of:

(A) its parent or affiliate;

(B) a controlled unaffiliated business; or

(C) a combination of Subsections (1)(b)(i)(A) and (B);

(ii) an association captive insurance company may not insure a risk other than a risk of:

(A) an affiliate;

(B) a member organization of its association; and

(C) an affiliate of a member organization of its association;

(iii) an industrial insured captive insurance company may not insure a risk other than a risk of:

(A) an industrial insured that is part of the industrial insured group;

(B) an affiliate of an industrial insured that is part of the industrial insured group; and

(C) a controlled unaffiliated business of:

(I) an industrial insured that is part of the industrial insured group; or

(II) an affiliate of an industrial insured that is part of the industrial insured group;

(iv) a special purpose captive insurance company may only insure a risk of its parent;

(v) a captive insurance company may not provide:

(A) personal motor vehicle insurance coverage;

(B) homeowner's insurance coverage; or

(C) a component of a coverage described in this Subsection (1)(b)(v); and

(vi) a captive insurance company may not accept or cede reinsurance except as provided in Section 31A-37-303.

(c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a special purpose captive insurance company may provide:

(i) insurance;

(ii) reinsurance; or

(iii) both insurance and reinsurance.

(2) To conduct insurance business in this state a captive insurance company shall:

(a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state;

(b) hold at least once each year in this state:

(i) a board of directors meeting; or

(ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;

(c) maintain in this state:

(i) the principal place of business of the captive insurance company; or

(ii) in the case of a branch captive insurance company, the principal place of business for the branch operations of the branch captive insurance company; and

(d) except as provided in Subsection (3), appoint a resident registered agent to accept service of process and to otherwise act on behalf of the captive insurance company in this state.

(3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner is the agent of the captive insurance company upon whom process, notice, or demand may be served.

(4) (a) Before receiving a certificate of authority, a captive insurance company:

(i) formed as a corporation shall file with the commissioner:

(A) a certified copy of:

(I) articles of incorporation or the charter of the corporation; and

(II) bylaws of the corporation;

(B) a statement under oath of the president and secretary of the corporation showing the financial condition of the corporation; and

(C) any other statement or document required by the commissioner under Section 31A-37-106;

(ii) formed as a reciprocal shall:

(A) file with the commissioner:

(I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

(II) a certified copy of the subscribers' agreement of the reciprocal;

(III) a statement under oath of the attorney-in-fact of the reciprocal showing the financial condition of the reciprocal; and

(IV) any other statement or document required by the commissioner under Section 31A-37-106; and

(B) submit to the commissioner for approval a description of the:

(I) coverages;

(II) deductibles;

(III) coverage limits;

(IV) rates; and

(V) any other information the commissioner requires under Section 31A-37-106.

(b) (i) If there is a subsequent material change in an item in the description required under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).

(ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner approves a revision of the description.

(iii) A reciprocal captive insurance company shall inform the commissioner of a

material change in a rate within 30 days of the adoption of the change.

(c) In addition to the information required by Subsection (4)(a), an applicant captive insurance company shall file with the commissioner evidence of:

(i) the amount and liquidity of the assets of the applicant captive insurance company relative to the risks to be assumed by the applicant captive insurance company;

(ii) the adequacy of the expertise, experience, and character of the person who will manage the applicant captive insurance company;

(iii) the overall soundness of the plan of operation of the applicant captive insurance company;

(iv) the adequacy of the loss prevention programs for the following of the applicant captive insurance company:

(A) a parent;

(B) a member organization; or

(C) an industrial insured; and

(v) any other factor the commissioner:

(A) adopts by rule under Section 31A-37-106; and

(B) considers relevant in ascertaining whether the applicant captive insurance company will be able to meet the policy obligations of the applicant captive insurance company.

(d) In addition to the information required by Subsections (4)(a), (b), and (c), an applicant sponsored captive insurance company shall file with the commissioner:

(i) a business plan at the level of detail required by the commissioner under Section 31A-37-106 demonstrating:

(A) the manner in which the applicant sponsored captive insurance company will account for the losses and expenses of each protected cell; and

(B) the manner in which the applicant sponsored captive insurance company will report to the commissioner the financial history, including losses and expenses, of each protected cell;

(ii) a statement acknowledging that the applicant sponsored captive insurance company will make all financial records of the applicant sponsored captive insurance company,

including records pertaining to a protected cell, available for inspection or examination by the commissioner;

(iii) a contract or sample contract between the applicant sponsored captive insurance company and a participant; and

(iv) evidence that expenses will be allocated to each protected cell in an equitable manner.

(5) (a) Information submitted pursuant to Subsection (4) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner may disclose information submitted pursuant to Subsection (4) to a public official having jurisdiction over the regulation of insurance in another state if:

(i) the public official receiving the information agrees in writing to maintain the confidentiality of the information; and

(ii) the laws of the state in which the public official serves require the information to be confidential.

(c) This Subsection (5) does not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.

(6) (a) A captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103 and 63J-1-504:

(i) a fee for examining, investigating, and processing, by a department employee, of an application for a certificate of authority made by a captive insurance company;

(ii) a fee for obtaining a certificate of authority for the year the captive insurance company is issued a certificate of authority by the department; and

(iii) a certificate of authority renewal fee.

(b) The commissioner may:

(i) retain legal, financial, and examination services from outside the department to perform the services described in:

(A) Subsection (6)(a); and

(B) Section 31A-37-502; and

(ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the applicant captive insurance company.

(7) If the commissioner is satisfied that the documents and statements filed by the applicant captive insurance company comply with this chapter, the commissioner may grant a certificate of authority authorizing the company to do insurance business in this state.

(8) A certificate of authority granted under this section expires annually and [~~must~~] shall be renewed by July 1 of each year.

Section 293. Section **31A-37-301** is amended to read:

31A-37-301. Incorporation.

(1) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:

(a) divided into shares; and

(b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:

(i) divided into shares; and

(ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;

(b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or

(c) organized as a reciprocal.

(3) A captive insurance company may not have fewer than three incorporators of whom not fewer than two [~~must~~] shall be residents of this state.

(4) (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (4)(a), the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, business qualifications of the officers and directors;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects the commissioner considers advisable.

(5) (a) A captive insurance company formed as a corporation shall file with the Division of Corporations and Commercial Code:

(i) the captive insurance company's articles of incorporation;

(ii) the certificate issued pursuant to Subsection (4); and

(iii) the fees required by the Division of Corporations and Commercial Code.

(b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection (4) for a captive insurance company that complies with this section.

(6) (a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (6)(a), the commissioner

shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects the commissioner considers advisable.

(7) (a) An alien captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:

(i) the home state of the alien captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that state; and

(ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.

(b) After the commissioner issues a certificate under Subsection (7)(a) to an alien captive insurance company, the alien captive insurance company may register to do business in this state.

(8) The capital stock of a captive insurance company incorporated as a stock insurer may not be issued at less than par value.

(9) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.

(10) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.

(11) (a) A captive insurance company formed as a corporation under this chapter has

the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.

(b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.

(c) Except as provided in Subsection (11)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

(d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.

(e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.

(12) (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.

(b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.

(c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.

(d) In addition to the provisions of this Subsection (12), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.

(13) The articles of incorporation or bylaws of a captive insurance company may not authorize a quorum of a board of directors to consist of fewer than [~~1/3~~] one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.

Section 294. Section **31A-37-302** is amended to read:

31A-37-302. Investment requirements.

(1) (a) Except as provided in Subsection (1)(b), an association captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in this title.

(b) Notwithstanding Subsection (1)(a) and any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating under Section 31A-37-106 for:

(i) an association captive insurance company;

(ii) a sponsored captive insurance company; or

(iii) an industrial insured group.

(2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in this title.

(b) Notwithstanding Subsection (2)(a), the commissioner may, under Section 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may not make loans to:

(A) the parent company of the captive insurance company; or

(B) an affiliate of the captive insurance company.

(ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make loans to:

(A) the parent company of the pure captive insurance company; or

(B) an affiliate of the pure captive insurance company.

(b) A loan under Subsection (3)(a):

(i) may be made only on the prior written approval of the commissioner; and

(ii) [~~must~~] shall be evidenced by a note in a form approved by the commissioner.

(c) A pure captive insurance company may not make a loan from:

(i) the paid-in capital required under Subsection 31A-37-204(1); or

(ii) the free surplus required under Subsection 31A-37-205(1).

Section 295. Section **31A-37-306** is amended to read:

31A-37-306. Conversion or merger.

(1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be:

(a) converted to a reciprocal insurer in accordance with a plan and this section; or

(b) merged with and into a reciprocal insurer in accordance with a plan and this section.

(2) A plan for a conversion or merger under this section:

(a) shall be fair and equitable to:

(i) the shareholders, in the case of a stock insurer; or

(ii) the policyholders, in the case of a mutual insurer; and

(b) shall provide for the purchase of:

(i) the shares of any nonconsenting shareholder of a stock insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting shareholder; or

(ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting policyholder.

(3) In the case of a conversion authorized under Subsection (1):

(a) the conversion [~~must~~] shall be accomplished under a reasonable plan and procedure that are approved by the commissioner;

(b) the commissioner may not approve the plan of conversion under this section unless the plan:

(i) satisfies Subsections (2) and (6);

(ii) provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and

(iii) is approved:

(A) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or

(B) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;

(c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under Subsection 31A-37-301(4);

(d) if the commissioner approves a plan of conversion, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;

(e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and

(f) upon the effectiveness of the conversion:

(i) the corporate existence of the converting insurer shall cease; and

(ii) the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.

(4) A merger authorized under Subsection (1) shall be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:

(a) the plan or merger shall satisfy Subsection (2);

(b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;

(c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;

(d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;

(e) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with the standards under Subsection 31A-37-301(4);

(f) notwithstanding Sections 31A-37-204 and 31A-37-205, the commissioner may permit the formation, without capital and surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and

(g) an alien insurer may be a party to a merger authorized under Subsection (1) if:

(i) the requirements for the merger between a domestic and a foreign insurer under Chapter 16, Insurance Holding Companies, are applied to the merger; and

(ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding Companies.

(5) If the commissioner approves the articles of merger under this section:

(a) the commissioner shall endorse the commissioner's approval on the articles; and

(b) the surviving insurer shall present the name to the Division of Corporations and Commercial Code.

(6) (a) Except as provided in Subsection (6)(b), a conversion authorized under Subsection (1) [~~must~~] shall provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.

(b) Notwithstanding Subsection (6)(a), the commissioner may waive or modify the requirements for the hearing.

(c) If a notice of hearing is required, but no hearing is requested, after notice has been given under Subsection (6)(a), the commissioner may cancel the hearing.

Section 296. Section **31A-37-402** is amended to read:

31A-37-402. Sponsored captive insurance companies -- Certificate of authority mandatory.

(1) A sponsor of a sponsored captive insurance company shall be:

(a) an insurer authorized or approved under the laws of a state;

(b) a reinsurer authorized or approved under the laws of a state;

(c) a captive insurance company holding a certificate of authority under this chapter;

(d) an insurance holding company that:

(i) controls an insurer licensed pursuant to the laws of a state; and

(ii) is subject to registration pursuant to the holding company system of laws of the state of domicile of the insurer described in Subsection (1)(d)(i); or

(e) another person approved by the commissioner after finding that the approval of the person as a sponsor is not inconsistent with the purposes of this chapter.

(2) (a) The business written by a sponsored captive insurance company with respect to a protected cell shall be fronted by an insurer that is:

(i) authorized or approved:

(A) under the laws of a state; or

(B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of a state;

(ii) reinsured by a reinsurer authorized or approved by this state; or

(iii) subject to Subsection (2)(b), secured by a trust fund:

(A) in the United States;

(B) for the benefit of policyholders and claimants; and

(C) funded by an irrevocable letter of credit or other asset acceptable to the commissioner.

(b) (i) The amount of security provided by the trust fund described in Subsection

(2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund, including:

(A) reserves for losses;

(B) allocated loss adjustment expenses;

(C) incurred but unreported losses; and

(D) unearned premiums for business written through the participant's protected cell.

(ii) The commissioner may require the sponsored captive insurance company to increase the funding of a trust established pursuant to this Subsection (2).

(iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of credit, the letter of credit [~~must~~] shall be established, issued, or confirmed by a bank that is:

(A) chartered in this state;

(B) a member of the federal reserve system; or

(C) chartered by another state if that state-chartered bank is acceptable to the commissioner.

(iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a form and upon terms approved by the commissioner.

(3) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Section 297. Section **31A-37-601** is amended to read:

31A-37-601. Incorporation of a captive reinsurance company.

(1) A captive reinsurance company shall be incorporated as a stock insurer with its capital:

(a) divided into shares; and

(b) held by the captive reinsurance company's shareholders.

(2) (a) A captive reinsurance company may not have fewer than three incorporators.

(b) At least two of the incorporators of a captive reinsurance company [~~must~~] shall be residents of this state.

(3) (a) Before the articles of incorporation are filed with the Division of Corporations

and Commercial Code, the incorporators shall obtain from the commissioner a certificate of finding that the establishment and maintenance of the proposed corporation promotes the general good of this state.

(b) In considering a request for a certificate under Subsection (3)(a), the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(iii) other factors the commissioner considers advisable.

(4) The capital stock of a captive reinsurance company [~~must~~] shall be issued at par value or greater.

(5) At least one of the members of the board of directors of a captive reinsurance company incorporated in this state [~~must~~] shall be a resident of this state.

Section 298. Section **31A-37a-205** is amended to read:

31A-37a-205. Sponsored captives.

In addition to the other provisions of this chapter, this section applies to a sponsored captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a certificate of authority as a special purpose financial captive insurance company pursuant to this chapter.

(1) A sponsored captive insurance company may have a certificate of authority as a special purpose financial captive insurance company under this chapter.

(2) (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, "general account" means the assets and liabilities of the sponsored captive insurance company not attributable to a protected cell.

(b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, the definition of "insolvency" and "insolvent" in Section

31A-37a-102 shall be applied separately to:

(i) each protected cell; and

(ii) the special purpose financial captive insurance company's general account.

(3) (a) A participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company [~~must~~] shall be a ceding insurer, unless approved by the commissioner before a person becomes a participant.

(b) A change in a participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to prior approval by the commissioner.

(4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance company that is a sponsored captive insurance company may issue a security to a person not described in Section 31A-37-401 if the issuance to that person is approved by the commissioner before the issuance of the security.

(5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall:

(a) at the time of initial application for a certificate of authority as a special purpose financial captive insurance company, possess unimpaired paid-in capital and surplus of not less than $500,000; and

(b) maintain at least $500,000 of unimpaired paid-in capital and surplus of not less than $500,000 during the time that it holds a certificate of authority under this chapter.

(6) (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, this Subsection (6) applies to:

(i) a security issued by the special purpose financial captive insurance company with respect to a protected cell; or

(ii) a contract or obligation of the special purpose financial captive insurance company with respect to a protected cell.

(b) A sponsored captive insurance company having a certificate of authority as a

special purpose financial captive insurance company shall include with a security, contract, or obligation described in Subsection (6)(a):

(i) the designation of the protected cell; and

(ii) a disclosure in a form and content satisfactory to the commissioner to the effect that the holder of the security or a counterparty to the contract or obligation has no right or recourse against the special purpose financial captive insurance company and its assets other than against an asset properly attributable to the protected cell.

(c) Notwithstanding the requirements of this Subsection (6) and subject to other statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a creditor, ceding insurer, or another person may not use a failure to include a disclosure described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

(i) the general account of the special purpose financial captive insurance company; or

(ii) the assets of another protected cell of the special financial captive insurance company.

(7) In addition to Section 31A-37-401, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to the following with respect to a protected cell:

(a) (i) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a protected cell only for the purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding insurer with the intent of facilitating an insurance securitization.

(ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

(iii) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to each reinsurance contract that is funded in whole or in part by a separate insurance securitization transaction.

(b) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not sale, exchange, or transfer an asset by, between, or among any of its protected cells without the prior approval of the commissioner.

(8) (a) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute an asset or liability to a protected cell and to the general account in accordance with the plan of operation approved by the commissioner.

(b) Except as provided by Subsection (8)(a), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not attribute an asset or liability between:

(i) its general account and a protected cell; or

(ii) its protected cells.

(c) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute:

(i) an insurance obligation, asset, or liability relating to a reinsurance contract entered into with respect to a protected cell; and

(ii) an insurance securitization transaction related to the obligation, asset, or liability described in Subsection (8)(c)(i), including a security issued by the special purpose financial captive insurance company as part of the insurance securitization, to the protected cell.

(d) The following shall reflect an insurance obligation, asset, or liability relating to a reinsurance contract and the insurance securitization transaction that are attributed to a protected cell:

(i) a right, benefit, obligation, or a liability of a security attributable to a protected cell described in Subsection (8)(c);

(ii) the performance under a reinsurance contract and the related insurance securitization transaction; and

(iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation

agreement to which the special purpose financial captive insurance company is a party, including a payment made by or due to be made to the special purpose financial captive insurance company pursuant to the terms of the tax allocation agreement.

(9) In addition to Section 31A-37a-502:

(a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company.

(b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer Receivership Act, with respect to a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with respect to:

(i) another protected cell of the special purpose financial captive insurance company; or

(ii) the special purpose financial captive insurance company's general account.

(c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose financial captive insurance company shall ensure that the assets attributable to one protected cell are not applied to the liabilities attributable to:

(A) another protected cell; or

(B) the special purpose financial captive insurance company's general account.

(ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more than one protected cell, the receiver shall deal with the asset or liability in accordance with the terms of a relevant governing instrument or contract.

(d) The insolvency of a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for the commissioner to prohibit:

(i) a payment by the special purpose financial captive insurance company made pursuant to a special purpose financial captive insurance company security or reinsurance

contract with respect to another protected cell; or

(ii) an action required to make a payment described in Subsection (9)(d)(i).

Section 299. Section **32B-1-407 (Effective 07/01/11)** is amended to read:

32B-1-407 (Effective 07/01/11). Verification of proof of age by applicable licensees.

(1) Notwithstanding any other provision of this part, an applicable licensee shall require that an authorized person under the applicable licensee verify proof of age as provided in this section.

(2) An authorized person is required to verify proof of age under this section before an individual who appears to be 35 years of age or younger:

(a) gains admittance to the premises of a social club licensee; or

(b) procures an alcoholic product on the premises of a dining club licensee.

(3) To comply with Subsection (2), an authorized person shall:

(a) request the individual present proof of age; and

(b) (i) verify the validity of the proof of age electronically under the verification program created in Subsection (4); or

(ii) if the proof of age cannot be electronically verified as provided in Subsection (3)(b)(i), request that the individual comply with a process established by the commission by rule.

(4) The commission shall establish by rule an electronic verification program that includes the following:

(a) the specifications for the technology used by the applicable licensee to electronically verify proof of age, including that the technology display to the person described in Subsection (1) no more than the following for the individual who presents the proof of age:

(i) the name;

(ii) the age;

(iii) the number assigned to the individual's proof of age by the issuing authority;

(iv) the birth date;

(v) the gender; and

(vi) the status and expiration date of the individual's proof of age; and

(b) the security measures that [~~must~~] shall be used by an applicable licensee to ensure that information obtained under this section is:

(i) used by the applicable licensee only for purposes of verifying proof of age in accordance with this section; and

(ii) retained by the applicable licensee for seven days after the day on which the applicable licensee obtains the information.

(5) (a) An applicable licensee may not disclose information obtained under this section except as provided under this title.

(b) Information obtained under this section is considered a record for any purpose under Chapter 5, Part 3, Retail Licensee Operational Requirements.

Section 300. Section **32B-1-505 (Effective 07/01/11)** is amended to read:

32B-1-505 (Effective 07/01/11). Sexually oriented entertainer.

(1) Subject to the requirements of this part, live entertainment is permitted on premises or at an event regulated by the commission.

(2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit a person to:

(a) appear or perform in a state of nudity;

(b) perform or simulate an act of:

(i) sexual intercourse;

(ii) masturbation;

(iii) sodomy;

(iv) bestiality;

(v) oral copulation;

(vi) flagellation; or

(vii) a sexual act that is prohibited by Utah law; or

(c) touch, caress, or fondle the breast, buttocks, anus, or genitals.

(3) A sexually oriented entertainer may perform in a state of seminudity:

(a) only in:

(i) a tavern; or

(ii) a social club license premises; and

(b) only if:

(i) the windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and

(ii) the outside entrance doors of the premises remain unlocked.

(4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:

(a) approved by the commission in accordance with rules made by the commission;

(b) configured so as to preclude a patron from:

(i) touching the sexually oriented entertainer; or

(ii) placing any money or object on or within the performance attire or the person of the sexually oriented entertainer; and

(c) configured so as to preclude the sexually oriented entertainer from touching a patron.

(5) A sexually oriented entertainer may not touch a patron:

(a) during the sexually oriented entertainer's performance; or

(b) while the sexually oriented entertainer is dressed in performance attire.

(6) A sexually oriented entertainer, while in the portion of the premises used by patrons, [~~must~~] shall be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire from the top of the breast to the knee.

(7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.

(8) A patron may not:

(a) touch a sexually oriented entertainer:

(i) during the sexually oriented entertainer's performance; or

(ii) while the sexually oriented entertainer is dressed in performance attire; or

(b) place money or any other object on or within the performance attire or the person of the sexually oriented entertainer.

(9) A minor may not be on premises described in Subsection (3).

(10) A person who appears or performs for the entertainment of patrons on premises or at an event regulated by the commission that is not a tavern or social club licensee:

(a) may not appear or perform in a state of nudity or a state of seminudity; and

(b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:

(i) is not less than the following at its widest point:

(A) four inches coverage width in the front of the human body; and

(B) five inches coverage width in the back of the human body;

(ii) does not taper to less than one inch wide at the narrowest point; and

(iii) if covering a female, completely covers the breast below the top of the areola.

Section 301. Section **32B-6-407 (Effective 07/01/11)** is amended to read:

32B-6-407 (Effective 07/01/11). Specific operational requirements for equity club license or fraternal club license.

(1) For purposes of this section only:

(a) "Club licensee" means an equity club licensee or fraternal club licensee.

(b) "Club licensee" does not include a dining club licensee or social club licensee.

(2) (a) A club licensee shall have a governing body that:

(i) consists of three or more members of the club; and

(ii) holds regular meetings to:

(A) review membership applications; and

(B) conduct other business as required by the bylaws or house rules of the club.

(b) (i) A club licensee shall maintain a minute book that is posted currently by the club licensee.

(ii) The minute book required by this Subsection (2) shall contain the minutes of a

regular or special meeting of the governing body.

(3) A club licensee may admit an individual as a member only on written application signed by the person, subject to:

(a) the person paying an application fee; and

(b) investigation, vote, and approval of a quorum of the governing body.

(4) A club licensee shall:

(a) record an admission of a member in the official minutes of a regular meeting of the governing body; and

(b) whether approved or disapproved, file an application as a part of the official records of the club licensee.

(5) The spouse of a member of a club licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the club licensee; and

(b) except to the extent restricted by this title.

(6) A minor child of a member of a club licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the club licensee; and

(b) except to the extent restricted by this title.

(7) A club licensee shall maintain:

(a) a current and complete membership record showing:

(i) the date of application of a proposed member;

(ii) a member's address;

(iii) the date the governing body approved a member's admission;

(iv) the date initiation fees and dues are assessed and paid; and

(v) the serial number of the membership card issued to a member;

(b) a membership list; and

(c) a current record indicating when a member is removed as a member or resigns.

(8) (a) A club licensee shall have bylaws or house rules that include provisions

respecting the following:

(i) standards of eligibility for members;

(ii) limitation of members, consistent with the nature and purpose of the club;

(iii) the period for which dues are paid, and the date upon which the period expires;

(iv) provisions for removing a member from the club membership for the nonpayment of dues or other cause;

(v) provisions for guests; and

(vi) application fees and membership dues.

(b) A club licensee shall maintain a current copy of the club licensee's current bylaws and current house rules.

(c) A club licensee shall maintain its bylaws or house rules, and any amendments to those records, on file with the department at all times.

(9) A club licensee may, in its discretion, allow an individual to be admitted to or use the club licensed premises as a guest subject to the following conditions:

(a) the individual is allowed to use the club licensee premises only to the extent permitted by the club licensee's bylaws or house rules;

(b) the individual [~~must~~] shall be previously authorized by a member of the club who agrees to host the individual as a guest into the club;

(c) the individual has only those privileges derived from the individual's host for the duration of the individual's visit to the club licensee premises; and

(d) a club licensee or staff of the club licensee may not enter into an agreement or arrangement with a club member to indiscriminately host a member of the general public into the club licensee premises as a guest.

(10) Notwithstanding Subsection (9), an individual may be allowed as a guest in a club licensed premises without a host if:

(a) (i) the club licensee is an equity club licensee; and

(ii) the individual is a member of an equity club licensee that has reciprocal guest privileges with the equity club licensee for which the individual is a guest; or

(b) (i) the club licensee is a fraternal club licensee; and

(ii) the individual is a member of the same fraternal organization as the fraternal club licensee for which the individual is a guest.

(11) Unless the patron is a member or guest, a club licensee may not:

(a) sell, offer for sale, or furnish an alcoholic product to the patron; or

(b) allow the patron to be admitted to or use the licensed premises.

(12) A minor may not be a member, officer, director, or trustee of a club licensee.

(13) Public advertising related to a club licensee by the following shall clearly identify a club as being "a club for members":

(a) the club licensee;

(b) staff of the club licensee; or

(c) a person under a contract or agreement with the club licensee.

Section 302. Section **32B-8-304 (Effective 07/01/11)** is amended to read:

32B-8-304 (Effective 07/01/11). Specific operational requirements for resort spa sublicense.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a resort spa sublicense shall comply with this section.

(b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a retail licensee;

(ii) staff of the retail licensee;

(iii) a person otherwise related to a resort spa sublicense; or

(iv) any combination of the persons listed in this Subsection (1)(b).

(2) A person operating under a resort spa sublicense shall display in a prominent place in the resort spa a list of the types and brand names of liquor being furnished through its calibrated metered dispensing system.

(3) (a) For purposes of the resort spa sublicense, the resort licensee shall ensure that a record required by this title is maintained, and a record is maintained or used for the resort spa sublicense:

(i) as the department requires; and

(ii) for a minimum period of three years.

(b) A record is subject to inspection by an authorized representative of the commission and the department.

(c) A resort licensee shall allow the department, through an auditor or examiner of the department, to audit the records for a resort spa sublicense at the times the department considers advisable.

(d) The department shall audit the records for a resort spa sublicense at least once annually.

(e) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (3).

(4) (a) A person operating under a resort spa sublicense may not sell, offer for sale, or furnish liquor at a resort spa during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish beer during the hours specified in Chapter 6, Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

(c) (i) Notwithstanding Subsections (4)(a) and (b), a resort spa shall remain open for one hour after the resort spa ceases the sale and furnishing of an alcoholic product during which time a person at the resort spa may finish consuming:

(A) a single drink containing spirituous liquor;

(B) a single serving of wine not exceeding five ounces;

(C) a single serving of heavy beer;

(D) a single serving of beer not exceeding 26 ounces; or

(E) a single serving of a flavored malt beverage.

(ii) A resort spa is not required to remain open:

(A) after all persons have vacated the resort spa sublicense premises; or

(B) during an emergency.

(d) A person operating under a resort spa sublicense may not allow a person to remain on the resort spa sublicense premises to consume an alcoholic product on the resort spa sublicense premises during a period that:

(i) begins at 2 a.m.; and

(ii) ends at 9:59 a.m.

(5) A minor may not be admitted into, use, or be on:

(a) the sublicense premises of a resort spa unless accompanied by a person 21 years of age or older; or

(b) a lounge or bar area of the resort spa sublicense premises.

(6) A resort spa shall have food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed on the resort spa sublicense premises.

(7) (a) Subject to the other provisions of this Subsection (7), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A resort spa patron may not have two spirituous liquor drinks before the resort spa patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(c) An individual portion of wine is considered to be one alcoholic product under this Subsection (7).

(8) (a) An alcoholic product may only be consumed at a table or counter.

(b) An alcoholic product may not be served to or consumed by a patron at a bar.

(9) (a) A person operating under a resort spa sublicense shall have available on the resort spa sublicense premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold or furnished by the resort spa including:

(i) a set-up charge;

(ii) a service charge; or

(iii) a chilling fee.

(b) A charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic product menus including:

(i) a set-up charge;

(ii) a service charge; or

(iii) a chilling fee.

(10) (a) A resort licensee shall own or lease premises suitable for the resort spa's activities.

(b) A resort licensee may not maintain premises in a manner that barricades or conceals the resort spa sublicense's operation.

(11) Subject to the other provisions of this section, a person operating under a resort spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or use the resort spa sublicense premises other than:

(a) a resident;

(b) a public customer who holds a valid customer card issued under Subsection (13); or

(c) an invitee.

(12) A person operating under a resort spa sublicense may allow an individual to be admitted to or use the resort spa sublicense premises as an invitee subject to the following conditions:

(a) the individual [~~must~~] shall be previously authorized by one of the following who agrees to host the individual as an invitee into the resort spa:

(i) a resident; or

(ii) a public customer as described in Subsection (11);

(b) the individual has only those privileges derived from the individual's host for the duration of the invitee's visit to the resort spa; and

(c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter

into an agreement or arrangement with a resident or public customer to indiscriminately host a member of the general public into the resort spa as an invitee.

(13) A person operating under a resort spa sublicense may issue a customer card to allow an individual to enter and use the resort spa sublicense premises on a temporary basis under the following conditions:

(a) the resort spa may not issue a customer card for a time period that exceeds three weeks;

(b) the resort spa shall assess a fee to a public customer for a customer card;

(c) the resort spa may not issue a customer card to a minor; and

(d) a public customer may not host more than seven invitees at one time.

Section 303. Section **34-19-1** is amended to read:

34-19-1. Declaration of policy.

In the interpretation and application of this chapter, the public policy of this state is declared as follows:

(1) It [~~shall not be~~] is not unlawful for employees to organize themselves into or carry on labor unions for the purpose of lessening hours of labor, increasing wages, bettering the conditions of members, or carrying out the legitimate purposes of such organizations as freely as they could do if acting singly.

(2) The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate object thereof; nor shall such organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

(3) Negotiations of terms and conditions of labor should result from voluntary agreement between employer and employee. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In

dealing with such employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect [~~his~~] the individual unorganized worker's freedom of labor and thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary that the individual employee have full freedom of association, self-organization, and designation of representatives of [~~his~~] the individual employee's own choosing to negotiate the terms and conditions of [~~his~~] the individual employee's employment, and that [~~he~~] the individual employee shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or their mutual aid or protection.

Section 304. Section **34-19-9** is amended to read:

34-19-9. Injunctive relief -- Contempt -- Rights of accused.

In all cases where a person shall be charged with indirect criminal contempt for violation of a restraining order or injunction issued by a court, or judge or judges of it, the accused shall enjoy:

(1) the rights as to admission to bail that are accorded to persons accused of crime;

(2) the right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view of or in the presence of the court;

(3) upon demand, the right to a speedy and public trial by an impartial jury of the judicial district in which the contempt shall have been committed. This requirement [~~shall not~~] may not be construed to apply to contempts committed in the presence of the court or so near to it as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court; and

(4) the right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand the

judge shall proceed no further, but another judge shall be designated by the presiding judge of the court. The demand shall be filed prior to the hearing in the contempt proceeding.

Section 305. Section **34-19-10** is amended to read:

34-19-10. Injunctive relief -- Contempt -- Penalty.

Punishment for a contempt, specified in Section 34-19-9, may be by fine, not exceeding $100, or by imprisonment not exceeding 15 days in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail for the nonpayment of such a fine, [~~he must~~] the person shall be discharged at the expiration of 15 days; but [~~where he~~] if the person is also committed for a definite time, the 15 days [~~must~~] shall be computed from the expiration of the definite time.

Section 306. Section **34-19-13** is amended to read:

34-19-13. Agreements against public policy.

[~~Every undertaking or promise~~] Each of the following undertakings or promises hereafter made, whether written or oral, express or implied, between any employee or prospective employee and [~~his~~] the employee's or prospective employee's employer, prospective employer, or any other individual, firm, company, association, or corporation, [~~whereby:~~] is contrary to public policy and may not be a basis for the granting of legal or equitable relief by any court against a party to the undertaking or promise, or against any other person who may advise, urge, or induce, without fraud, violence or threat of violence, either party to act in disregard of the undertaking or promise:

(1) [~~either party thereto undertakes or promises~~] an undertaking or promise by either party to join or to remain a member of some specific labor organization or organizations or to join or remain a member of some specific employer organization or any employer organization or organizations; [~~and/or~~]

(2) [~~either party thereto undertakes or promises not to~~] an undertaking or promise by either party to not join or not [~~to~~] remain a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations; [~~and/or~~] or

(3) [~~either party thereto undertakes or promises that he will~~] an undertaking or promise by either party to withdraw from an employment relation in the event that [~~he~~] the party joins or remains a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations[~~; is hereby declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise, or against any other persons who may advise, urge or induce, without fraud, violence or threat thereof, either party thereto to act in disregard of such undertaking or promise~~].

Section 307. Section **34-20-3** is amended to read:

34-20-3. Labor relations board.

(1) (a) There is created the Labor Relations Board consisting of the following:

(i) the commissioner of the Labor Commission;

(ii) two members appointed by the governor with the consent of the Senate consisting of:

(A) a representative of employers, in making this appointment the governor shall consider nominations from employer organizations; and

(B) a representative of employees, in making this appointment the governor shall consider nominations from employee organizations.

(b) (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every two years.

(c) The commissioner shall serve as chair of the board.

(d) A vacancy occurring on the board for any cause of the members appointed under Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to

this section for the unexpired term of the vacating member.

(e) The governor may at any time remove a member appointed under Subsection (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.

(g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(2) A meeting of the board may be called:

(a) by the chair; or

(b) jointly by the members appointed under Subsection (1)(a)(ii).

(3) The chair may provide staff and administrative support as necessary from the Labor Commission.

(4) A vacancy in the board [~~shall not~~] does not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall at all times constitute a quorum.

(5) The board shall have an official seal which shall be judicially noticed.

Section 308. Section **34-20-5** is amended to read:

34-20-5. Labor relations board -- Offices -- Jurisdiction -- Member's participation in case.

The principal office of the board shall be at the state capitol, but it may meet and exercise any or all of its powers at any other place. The board may, by one or more of its

members or by [~~such~~] the agents or agencies [~~as~~] it may designate, prosecute any inquiry necessary to its functions in any part of the state. A member who participates in [~~such~~] the inquiry [~~shall not~~] may not be disqualified from subsequently participating in a decision of the board in the same case.

Section 309. Section **34-20-8** is amended to read:

34-20-8. Unfair labor practices.

(1) It shall be an unfair labor practice for an employer, individually or in concert with others:

(a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 34-20-7.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the board pursuant to Section 34-20-6, an employer [~~shall not be~~] is not prohibited from permitting employees to confer with [~~him~~] the employer during working hours without loss of time or pay.

(c) By discrimination in regard to hire or tenure of employment or any term of condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Subsection 34-20-9(1) in the appropriate collective bargaining unit covered by such agreement when made.

(d) To refuse to bargain collectively with the representative of a majority of [~~his~~] the employer's employees in any collective bargaining unit; provided, that, when two or more labor organizations claim to represent a majority of the employees in the bargaining unit, the employer shall be free to file with the board a petition for investigation of certification of representatives and during the pendency of [~~such~~] the proceedings the employer [~~shall not~~] may not be [~~deemed~~] considered to have refused to bargain.

(e) To bargain collectively with the representatives of less than a majority of [~~his~~] the employer's employees in a collective bargaining unit.

(f) To discharge or otherwise discriminate against an employee because [~~he~~] the employee has filed charges or given testimony under this [~~act~~] chapter.

(2) It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of [~~his~~] the employee's legal rights, including those guaranteed in Section 34-20-7, or to intimidate [~~his~~] the employee's family, picket [~~his~~] the employee's domicile, or injure the person or property of [~~such~~] the employee or [~~his~~] the employee's family.

(b) To coerce, intimidate or induce an employer to interfere with any of [~~his~~] the employer's employees in the enjoyment of their legal rights, including those guaranteed in Section 34-20-7, or to engage in any practice with regard to [~~his~~] the employer's employees which would constitute an unfair labor practice if undertaken by [~~him on his~~] the employer on the employer's own initiative.

(c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

(d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

(e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent

sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

(f) To take unauthorized possession of property of the employer.

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by Subsections (1) and (2) of this section.

Section 310. Section **34-23-208** is amended to read:

34-23-208. Exceptions.

The provisions of this chapter [~~shall not~~] do not apply to a person who is 16 years of age or older and for whom employment would not endanger [~~his~~] the person's health and safety if that person:

(1) has received a high school diploma;

(2) has received a school release certificate;

(3) is legally married; or

(4) is head of a household.

Section 311. Section **34-25-2** is amended to read:

34-25-2. "Fellow servant" defined.

All persons who are engaged in the service of any employer and who while so engaged are in the same grade of service and are working together at the same time and place and to a common purpose, neither of such persons being entrusted by such employer with any superintendence or control over [~~his~~] the person's fellow employees, are fellow servants with each other; but nothing herein contained shall be so construed as to make the employees of such employer fellow servants with other employees engaged in any other department of service of such employer. Employees who do not come within the provisions of this section [~~shall not~~] may not be considered fellow servants.

Section 312. Section **34-28-5** is amended to read:

34-28-5. Separation from payroll -- Resignation -- Cessation because of industrial

dispute.

(1) (a) Whenever an employer separates an employee from the employer's payroll the unpaid wages of the employee become due immediately, and the employer shall pay the wages to the employee within 24 hours of the time of separation at the specified place of payment.

(b) (i) In case of failure to pay wages due an employee within 24 hours of written demand, the wages of the employee shall continue from the date of demand until paid, but in no event to exceed 60 days, at the same rate that the employee received at the time of separation.

(ii) The employee may recover the penalty thus accruing to the employee in a civil action. This action [~~must~~] shall be commenced within 60 days from the date of separation.

(iii) An employee who has not made a written demand for payment is not entitled to any penalty under Subsection (1)(b).

(2) If an employee does not have a written contract for a definite period and resigns the employee's employment, the wages earned and unpaid together with any deposit held by the employer and properly belonging to the resigned employee for the performance of the employee's employment duties become due and payable on the next regular payday.

(3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at the time of this cessation become due and payable at the next regular payday, as provided in Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of the industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employment.

(4) This section does not apply to the earnings of a sales agent employed on a commission basis who has custody of accounts, money, or goods of the sales agent's principal if the net amount due the agent is determined only after an audit or verification of sales, accounts, funds, or stocks.

Section 313. Section **34-28-6** is amended to read:

34-28-6. Dispute over wages -- Notice and payment.

(1) In case of a dispute over wages, the employer shall give written notice to the

employee of the amount of wages [~~which he~~] that the employer concedes to be due and shall pay such amount without condition within the time set by this chapter[~~; but acceptance by the employee of any such payment made shall not~~].

(2) Acceptance by an employee of a payment described in Subsection (1) does not constitute a release as to the balance of [~~his~~] the employee's claim.

Section 314. Section **34-28-14** is amended to read:

34-28-14. Actions by division as assignee -- Costs need not be advanced.

(1) In all actions brought by the division as assignee under Section 34-28-13, no court costs of any nature shall be required to be advanced nor shall any bond or other security be required from the division in connection with the same.

(2) Any sheriff, constable, or other officer requested by the division to serve summons, writs, complaints, orders, including any garnishment papers, and all necessary and legal papers within his jurisdiction shall do so without requiring the division to advance the fees or furnish any security or bond.

(3) Whenever the division shall require the sheriff, constable, or other officer whose duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage claim judgment to perform any such duty, this officer shall do so without requiring the division to furnish any security or bond in the action.

(4) The officer in carrying out the provisions of this Subsection (4) [~~shall not be~~] is not responsible in damages for any wrongful seizure made in good faith.

(5) Whenever anyone other than the defendant claims the right of possession or ownership to such seized property, then in such case the officer may permit such claimant to have the custody of such property pending a determination of the court as to who has right of possession or ownership of such property.

(6) Any garnishee defendant shall be required to appear and make answer in any such action, as required by law, without having paid to [~~him~~] the garnishee defendant in advance witness fees, but such witness fees shall be included as part of the taxable costs of such action. Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the

witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriff's or constable's fees; and fourth, the court costs.

Section 315. Section **34-29-1** is amended to read:

34-29-1. License required -- Agencies for teachers excepted.

It shall be unlawful for any person to open and establish in any city or town, or elsewhere within the limits of this state, any intelligence or employment office for the purpose of procuring or obtaining for money or other valuable consideration, either directly or indirectly, any work or employment for persons seeking the same, or to otherwise engage in such business, or in any way to act as a broker or go-between between employers and persons seeking work, without first having obtained a license so to do from the city, town, or, if not within any city or town, from the county where such intelligence or employment office is to be opened or such business is to be carried on. Any person performing any of these services shall be deemed to be an employment agent within the meaning of this chapter, but the provisions of Section 34-29-10 [~~shall not~~] do not apply to any person operating agencies for schoolteachers; but it shall be a misdemeanor for any schoolteachers' employment agency to receive as commission for information or assistance such as is described herein any consideration in value in excess of 5% of the amount of the first year's salary of the person to whom such information is furnished.

Section 316. Section **34-32-4** is amended to read:

34-32-4. Exceptions from chapter.

(1) The provisions of this chapter [~~shall not~~] do not apply to carriers as that term is defined in the Railway Labor Act passed by the Congress of the United States, June 21, 1934. 48 Stat. 1189, U.S. Code, Title 45, Section 151.

(2) Nothing in this chapter is intended to, or may be construed to, preempt any requirement of federal law.

Section 317. Section **34-34-2** is amended to read:

34-34-2. Public policy.

It is hereby declared to be the public policy of the state [~~of Utah~~] that the right of

persons to work, whether in private employment or for the state, its counties, cities, school districts, or other political subdivisions, [~~shall not~~] may not be denied or abridged on account of membership or nonmembership in any labor union, labor organization or any other type of association; and further, that the right to live includes the right to work. The exercise of the right to work [~~must~~] shall be protected and maintained free from undue restraints and coercion.

Section 318. Section **34-34-15** is amended to read:

34-34-15. Existing contracts -- Chapter applicable upon renewal or extension.

The provisions of this chapter [~~shall not~~] do not apply to any lawful contract in force on the effective date of this act, but they shall apply in all respects to contracts entered into after such date and to any renewal or extension of any existing contract.

Section 319. Section **34-36-3** is amended to read:

34-36-3. Carriers and vehicles of United States exempt.

This chapter [~~shall not~~] does not apply to motor carriers or to motor vehicles owned and operated by the United States.

Section 320. Section **34-41-106** is amended to read:

34-41-106. Employee not disabled.

An employee, volunteer, prospective employee, or prospective volunteer whose drug test results are verified or confirmed as positive in accordance with the provisions of this chapter [~~shall not~~] may not, by virtue of those results alone, be defined as disabled for purposes of:

(1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or

(2) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

Section 321. Section **34A-1-408** is amended to read:

34A-1-408. Investigations through representatives.

(1) For the purpose of making any investigation necessary for the implementation of this title with regard to any employment or place of employment, the commission may appoint, in writing, any competent person who is a resident of the state, as an agent, whose duties shall be prescribed in the written appointment.

(2) In the discharge of the agent's duties, the agent shall have:

(a) every power of investigation granted in this title to the commission; and

(b) the same powers as a referee appointed by a district court with regard to taking evidence.

(3) The commission may:

(a) conduct any number of the investigations contemporaneously through different agents; and

(b) delegate to the agents the taking of evidence bearing upon any investigation or hearing.

(4) The recommendations made by the agents shall be advisory only and [~~shall not~~] do not preclude the taking of further evidence or further investigation if the commission so orders.

Section 322. Section **34A-1-409** is amended to read:

34A-1-409. Partial invalidity -- Saving clause.

Should any section or provision of this title be decided by the courts to be unconstitutional or invalid the same [~~shall not~~] does not affect the validity of the title as a whole or any part of the title other than the part so decided to be unconstitutional.

Section 323. Section **34A-2-413** is amended to read:

34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.

(1) (a) In the case of a permanent total disability resulting from an industrial accident or occupational disease, the employee shall receive compensation as outlined in this section.

(b) To establish entitlement to permanent total disability compensation, the employee [~~must~~] shall prove by a preponderance of evidence that:

(i) the employee sustained a significant impairment or combination of impairments as a result of the industrial accident or occupational disease that gives rise to the permanent total disability entitlement;

(ii) the employee is permanently totally disabled; and

(iii) the industrial accident or occupational disease is the direct cause of the employee's permanent total disability.

(c) To establish that an employee is permanently totally disabled the employee [~~must~~] shall prove by a preponderance of the evidence that:

(i) the employee is not gainfully employed;

(ii) the employee has an impairment or combination of impairments that limit the employee's ability to do basic work activities;

(iii) the industrial or occupationally caused impairment or combination of impairments prevent the employee from performing the essential functions of the work activities for which the employee has been qualified until the time of the industrial accident or occupational disease that is the basis for the employee's permanent total disability claim; and

(iv) the employee cannot perform other work reasonably available, taking into consideration the employee's:

(A) age;

(B) education;

(C) past work experience;

(D) medical capacity; and

(E) residual functional capacity.

(d) Evidence of an employee's entitlement to disability benefits other than those provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

(i) may be presented to the commission;

(ii) is not binding; and

(iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah Occupational Disease Act.

(e) In determining under Subsections (1)(b) and (c) whether an employee cannot perform other work reasonably available, the following may not be considered:

(i) whether the employee is incarcerated in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or

(ii) whether the employee is not legally eligible to be employed because of a reason

unrelated to the impairment or combination of impairments.

(2) For permanent total disability compensation during the initial 312-week entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the injury, limited as follows:

(a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;

(b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the sum of $45 per week and:

(A) $5 for a dependent spouse; and

(B) $5 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children; and

(ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

(A) the maximum established in Subsection (2)(a); or

(B) the average weekly wage of the employee at the time of the injury; and

(c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest dollar.

(3) This Subsection (3) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or before June 30, 1994.

(a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent total disability compensation except as outlined in Section 34A-2-703 as in effect on the date of injury.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) The Employers' Reinsurance Fund shall for an overpayment of compensation

described in Subsection (3)(b), reimburse the overpayment:

(i) to the employer or its insurance carrier; and

(ii) out of the Employers' Reinsurance Fund's liability to the employee.

(d) After an employee receives compensation from the employee's employer, its insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities amounting to 312 weeks of compensation at the applicable permanent total disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total disability compensation.

(e) Employers' Reinsurance Fund payments shall commence immediately after the employer or its insurance carrier satisfies its liability under this Subsection (3) or Section 34A-2-703.

(4) This Subsection (4) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or after July 1, 1994.

(a) The employer or its insurance carrier is liable for permanent total disability compensation.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) The employer or its insurance carrier may recoup the overpayment of compensation described in Subsection (4) by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(5) (a) A finding by the commission of permanent total disability is not final, unless otherwise agreed to by the parties, until:

(i) an administrative law judge reviews a summary of reemployment activities undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;

(ii) the employer or its insurance carrier submits to the administrative law judge:

(A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably designed to return the employee to gainful employment; or

(B) notice that the employer or its insurance carrier will not submit a plan; and

(iii) the administrative law judge, after notice to the parties, holds a hearing, unless otherwise stipulated, to:

(A) consider evidence regarding rehabilitation; and

(B) review any reemployment plan submitted by the employer or its insurance carrier under Subsection (5)(a)(ii).

(b) Before commencing the procedure required by Subsection (5)(a), the administrative law judge shall order:

(i) the initiation of permanent total disability compensation payments to provide for the employee's subsistence; and

(ii) the payment of any undisputed disability or medical benefits due the employee.

(c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.

(d) The employer or its insurance carrier shall be given credit for any disability payments made under Subsection (5)(b) against its ultimate disability compensation liability under this chapter or Chapter 3, Utah Occupational Disease Act.

(e) An employer or its insurance carrier may not be ordered to submit a reemployment plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to Subsections (5)(e)(i) through (iii).

(i) The plan may include, but not require an employee to pay for:

(A) retraining;

(B) education;

(C) medical and disability compensation benefits;

(D) job placement services; or

(E) incentives calculated to facilitate reemployment.

(ii) The plan shall include payment of reasonable disability compensation to provide

for the employee's subsistence during the rehabilitation process.

(iii) The employer or its insurance carrier shall diligently pursue the reemployment plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan is cause for the administrative law judge on the administrative law judge's own motion to make a final decision of permanent total disability.

(f) If a preponderance of the evidence shows that successful rehabilitation is not possible, the administrative law judge shall order that the employee be paid weekly permanent total disability compensation benefits.

(g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an employee could immediately or without unreasonable delay return to work but for the following, an administrative law judge shall order that the employee be denied the payment of weekly permanent total disability compensation benefits:

(i) incarceration in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or

(ii) not being legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.

(6) (a) The period of benefits commences on the date the employee became permanently totally disabled, as determined by a final order of the commission based on the facts and evidence, and ends:

(i) with the death of the employee; or

(ii) when the employee is capable of returning to regular, steady work.

(b) An employer or its insurance carrier may provide or locate for a permanently totally disabled employee reasonable, medically appropriate, part-time work in a job earning at least minimum wage, except that the employee may not be required to accept the work to the extent that it would disqualify the employee from Social Security disability benefits.

(c) An employee shall:

(i) fully cooperate in the placement and employment process; and

(ii) accept the reasonable, medically appropriate, part-time work.

(d) In a consecutive four-week period when an employee's gross income from the work provided under Subsection (6)(b) exceeds $500, the employer or insurance carrier may reduce the employee's permanent total disability compensation by 50% of the employee's income in excess of $500.

(e) If a work opportunity is not provided by the employer or its insurance carrier, a permanently totally disabled employee may obtain medically appropriate, part-time work subject to the offset provisions of Subsection (6)(d).

(f) (i) The commission shall establish rules regarding the part-time work and offset.

(ii) The adjudication of disputes arising under this Subsection (6) is governed by Part 8, Adjudication.

(g) The employer or its insurance carrier has the burden of proof to show that medically appropriate part-time work is available.

(h) The administrative law judge may:

(i) excuse an employee from participation in any work:

(A) that would require the employee to undertake work exceeding the employee's:

(I) medical capacity; or

(II) residual functional capacity; or

(B) for good cause; or

(ii) allow the employer or its insurance carrier to reduce permanent total disability benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time work is offered, but the employee fails to fully cooperate.

(7) When an employee is rehabilitated or the employee's rehabilitation is possible but the employee has some loss of bodily function, the award shall be for permanent partial disability.

(8) As determined by an administrative law judge, an employee is not entitled to disability compensation, unless the employee fully cooperates with any evaluation or reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The

administrative law judge shall dismiss without prejudice the claim for benefits of an employee if the administrative law judge finds that the employee fails to fully cooperate, unless the administrative law judge states specific findings on the record justifying dismissal with prejudice.

(9) (a) The loss or permanent and complete loss of the use of the following constitutes total and permanent disability that is compensated according to this section:

(i) both hands;

(ii) both arms;

(iii) both feet;

(iv) both legs;

(v) both eyes; or

(vi) any combination of two body members described in this Subsection (9)(a).

(b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.

(10) (a) An insurer or self-insured employer may periodically reexamine a permanent total disability claim, except those based on Subsection (9), for which the insurer or self-insured employer had or has payment responsibility to determine whether the employee remains permanently totally disabled.

(b) Reexamination may be conducted no more than once every three years after an award is final, unless good cause is shown by the employer or its insurance carrier to allow more frequent reexaminations.

(c) The reexamination may include:

(i) the review of medical records;

(ii) employee submission to one or more reasonable medical evaluations;

(iii) employee submission to one or more reasonable rehabilitation evaluations and retraining efforts;

(iv) employee disclosure of Federal Income Tax Returns;

(v) employee certification of compliance with Section 34A-2-110; and

(vi) employee completion of one or more sworn affidavits or questionnaires approved

by the division.

(d) The insurer or self-insured employer shall pay for the cost of a reexamination with appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per diem as well as reasonable expert witness fees incurred by the employee in supporting the employee's claim for permanent total disability benefits at the time of reexamination.

(e) If an employee fails to fully cooperate in the reasonable reexamination of a permanent total disability finding, an administrative law judge may order the suspension of the employee's permanent total disability benefits until the employee cooperates with the reexamination.

(f) (i) If the reexamination of a permanent total disability finding reveals evidence that reasonably raises the issue of an employee's continued entitlement to permanent total disability compensation benefits, an insurer or self-insured employer may petition the Division of Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include with the petition, documentation supporting the insurer's or self-insured employer's belief that the employee is no longer permanently totally disabled.

(ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a hearing.

(iii) Evidence of an employee's participation in medically appropriate, part-time work may not be the sole basis for termination of an employee's permanent total disability entitlement, but the evidence of the employee's participation in medically appropriate, part-time work under Subsection (6) may be considered in the reexamination or hearing with other evidence relating to the employee's status and condition.

(g) In accordance with Section 34A-1-309, the administrative law judge may award reasonable attorney fees to an attorney retained by an employee to represent the employee's interests with respect to reexamination of the permanent total disability finding, except if the employee does not prevail, the attorney fees shall be set at $1,000. The attorney fees awarded shall be paid by the employer or its insurance carrier in addition to the permanent total

disability compensation benefits due.

(h) During the period of reexamination or adjudication, if the employee fully cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall continue to pay the permanent total disability compensation benefits due the employee.

(11) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section is given effect without the invalid provision or application.

Section 324. Section **34A-2-802** is amended to read:

34A-2-802. Rules of evidence and procedure before commission -- Admissible evidence.

(1) The commission, the commissioner, an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules or procedure, other than as provided in this section or as adopted by the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.

(2) The commission may receive as evidence and use as proof of any fact in dispute all evidence [~~deemed~~] considered material and relevant including[~~, but not limited to~~] the following:

(a) depositions and sworn testimony presented in open hearings;

(b) reports of attending or examining physicians, or of pathologists;

(c) reports of investigators appointed by the commission;

(d) reports of employers, including copies of time sheets, book accounts, or other records; or

(e) hospital records in the case of an injured or diseased employee.

Section 325. Section **34A-3-104** is amended to read:

34A-3-104. Employer liability for compensation.

(1) Every employer is liable for the payment of disability and medical benefits to every

employee who becomes disabled, or death benefits to the dependents of any employee who dies, by reason of an occupational disease under the terms of this chapter.

(2) Compensation [~~shall not~~] may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease occurred prior to 1941.

Section 326. Section **34A-6-108** is amended to read:

34A-6-108. Collection, compilation, and analysis of statistics.

(1) The division shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The program may cover all employments whether subject to this chapter but [~~shall not~~] may not cover employments excluded by Subsection 34A-6-104(2). The division shall compile accurate statistics on work injuries and occupational diseases.

(2) The division may use the functions imposed by Subsection (1) to:

(a) promote, encourage, or directly engage in programs of studies, information, and communication concerning occupational safety and health statistics;

(b) assist agencies or political subdivisions in developing and administering programs dealing with occupational safety and health statistics; and

(c) arrange, through assistance, for the conduct of research and investigations which give promise of furthering the objectives of this section.

(3) The division may, with the consent of any state agency or political subdivision of the state, accept and use the services, facilities, and employees of state agencies or political subdivisions of the state, with or without reimbursement, to assist it in carrying out its functions under this section.

(4) On the basis of the records made and kept under Subsection 34A-6-301(3), employers shall file reports with the division in the form and manner prescribed by the division.

(5) Agreements between the United States Department of Labor and Utah pertaining to the collection of occupational safety and health statistics already in effect on July 1, 1973, remain in effect until superseded.

Section 327. Section **34A-6-202** is amended to read:

34A-6-202. Standards -- Procedure for issuance, modification, or revocation by division -- Emergency temporary standard -- Variances from standards -- Statement of reasons for administrator's actions -- Judicial review -- Priority for establishing standards.

(1) (a) The division, as soon as practicable, shall issue as standards any national consensus standard, any adopted federal standard, or any adopted Utah standard, unless it determines that issuance of the standard would not result in improved safety or health.

(b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30 days after publication unless otherwise specified.

(c) If any conflict exists between standards, the division shall issue the standard that assures the greatest protection of safety or health for affected employees.

(2) The division may issue, modify, or revoke any standard as follows:

(a) (i) Whenever the administrator determines upon the basis of information submitted in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Department of Health, or a state agency or political subdivision, or on information developed by the division or otherwise available, that a rule should be promulgated to promote the objectives of this chapter, the administrator may request recommendations from the advisory council.

(ii) The administrator shall provide the advisory council with proposals, together with all pertinent factual information developed by the division, or otherwise available, including the results of research, demonstrations, and experiments.

(iii) The advisory council shall submit to the administrator its recommendations regarding the rule to be promulgated within a period as prescribed by the administrator.

(b) The division shall publish a proposed rule issuing, modifying, or revoking an occupational safety or health standard and shall afford interested parties an opportunity to submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative Rulemaking Act. When the administrator determines that a rule should be issued, the division

shall publish the proposed rule after the submission of the advisory council's recommendations or the expiration of the period prescribed by the administrator for submission.

(c) The administrator, in issuing standards for toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard during an employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and other information deemed appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience under this and other health and safety laws. Whenever practicable, the standard shall be expressed in terms of objective criteria and of the performance desired.

(d) (i) Any employer may apply to the administrator for a temporary order granting a variance from a standard issued under this section. Temporary orders shall be granted only if the employer:

(A) files an application which meets the requirements of Subsection (2)(d)(iv);

(B) establishes that the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed for compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(C) establishes that the employer is taking all available steps to safeguard the employer's employees against hazards; and

(D) establishes that the employer has an effective program for compliance as quickly as practicable.

(ii) Any temporary order shall prescribe the practices, means, methods, operations, and processes which the employer [~~must~~] shall adopt and use while the order is in effect and state in detail the employer's program for compliance with the standard. A temporary order may be

granted only after notice to employees and an opportunity for a public hearing; provided, that the administrator may issue one interim order effective until a decision is made after public hearing.

(iii) A temporary order may not be in effect longer than the period reasonably required by the employer to achieve compliance. In no case shall the period of a temporary order exceed one year.

(iv) An application for a temporary order under Subsection (2)(d) shall contain:

(A) a specification of the standard or part from which the employer seeks a variance;

(B) a representation by the employer, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the employer is unable to comply with the standard or some part of the standard;

(C) a detailed statement of the reasons the employer is unable to comply;

(D) a statement of the measures taken and anticipated with specific dates, to protect employees against the hazard;

(E) a statement of when the employer expects to comply with the standard and what measures the employer has taken and those anticipated, giving specific dates for compliance; and

(F) a certification that the employer has informed the employer's employees of the application by:

(I) giving a copy to their authorized representative;

(II) posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted; and

(III) by other appropriate means.

(v) The certification required under Subsection (2)(d)(iv) shall contain a description of how employees have been informed.

(vi) The information to employees required under Subsection (2)(d)(v) shall inform the employees of their right to petition the division for a hearing.

(vii) The administrator is authorized to grant a variance from any standard or some part of the standard when the administrator determines that it is necessary to permit an employer to participate in a research and development project approved by the administrator to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(e) (i) Any standard issued under this subsection shall prescribe the use of labels or other forms of warning necessary to ensure that employees are apprised of all hazards, relevant symptoms and emergency treatment, and proper conditions and precautions of safe use or exposure. When appropriate, a standard shall prescribe suitable protective equipment and control or technological procedures for use in connection with such hazards and provide for monitoring or measuring employee exposure at such locations and intervals, and in a manner necessary for the protection of employees. In addition, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer, or at the employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of employees is adversely affected by exposure. If medical examinations are in the nature of research as determined by the division, the examinations may be furnished at division expense. The results of such examinations or tests shall be furnished only to the division; and, at the request of the employee, to the employee's physician.

(ii) The administrator may by rule make appropriate modifications in requirements for the use of labels or other forms of warning, monitoring or measuring, and medical examinations warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(f) Whenever a rule issued by the administrator differs substantially from an existing national consensus standard, the division shall publish a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.

(g) Whenever a rule, standard, or national consensus standard is modified by the secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and

Health Act of 1970, the less restrictive modification shall be immediately applicable to this chapter and shall be immediately implemented by the division.

(3) (a) The administrator shall provide an emergency temporary standard to take immediate effect upon publication if the administrator determines that:

(i) employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(ii) that the standard is necessary to protect employees from danger.

(b) An emergency standard shall be effective until superseded by a standard issued in accordance with the procedures prescribed in Subsection (3)(c).

(c) Upon publication of an emergency standard the division shall commence a proceeding in accordance with Subsection (2) and the standard as published shall serve as a proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no later than 120 days after publication of the emergency standard.

(4) (a) Any affected employer may apply to the division for a rule or order for a variance from a standard issued under this section. Affected employees shall be given notice of each application and may participate in a hearing. The administrator shall issue a rule or order if the administrator determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and a workplace to the employer's employees that are as safe and healthful as those which would prevail if the employer complied with the standard.

(b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes that the employer must adopt and use to the extent they differ from the standard in question.

(c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon application by an employer, employees, or by the administrator on its own motion, in the manner prescribed for its issuance under Subsection (4) at any time after six months from its

issuance.

(5) The administrator shall include a statement of reasons for the administrator's actions when the administrator:

(a) issues any code, standard, rule, or order;

(b) grants any exemption or extension of time; or

(c) compromises, mitigates, or settles any penalty assessed under this chapter.

(6) Any person adversely affected by a standard issued under this section, at any time prior to 60 days after a standard is issued, may file a petition challenging its validity with the district court having jurisdiction for judicial review. A copy of the petition shall be served upon the division by the petitioner. The filing of a petition [~~shall not~~] may not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the division shall be conclusive if supported by substantial evidence on the record as a whole.

(7) In determining the priority for establishing standards under this section, the division shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The administrator shall also give due regard to the recommendations of the Department of Health about the need for mandatory standards in determining the priority for establishing the standards.

Section 328. Section **34A-6-301** is amended to read:

34A-6-301. Inspection and investigation of workplace, worker injury, illness, or complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers -- Employer and employee representatives -- Request for inspection -- Compilation and publication of reports and information -- Rules.

(1) (a) The division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(i) enter without delay at reasonable times any workplace where work is performed by an employee of an employer;

(ii) inspect and investigate during regular working hours and at other reasonable times

in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials in the workplace; and

(iii) question privately any such employer, owner, operator, agent, or employee.

(b) The division, upon an employer's refusal to permit an inspection, may seek a warrant pursuant to the Utah Rules of Criminal Procedure.

(2) (a) The division or its representatives may require the attendance and testimony of witnesses and the production of evidence under oath.

(b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.

(c) (i) If any person fails or refuses to obey an order of the division to appear, any district court within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the division, shall have jurisdiction to issue to any person an order requiring that person to:

(A) appear to produce evidence if, as, and when so ordered; and

(B) give testimony relating to the matter under investigation or in question.

(ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be punished by the court as a contempt.

(3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers:

(i) to keep records regarding activities related to this chapter considered necessary for enforcement or for the development of information about the causes and prevention of occupational accidents and diseases; and

(ii) through posting of notices or other means, to inform employees of their rights and obligations under this chapter including applicable standards.

(b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding any work-related death and injury and any occupational disease as provided in this Subsection (3)(b).

(i) Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

(ii) Each employer shall, within eight hours of occurrence, notify the division of any:

(A) work-related fatality;

(B) disabling, serious, or significant injury; or

(C) occupational disease incident.

(iii) (A) Each employer shall file a report with the Division of Industrial Accidents within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, in the form prescribed by the Division of Industrial Accidents, of any work-related fatality or any work-related injury or occupational disease resulting in:

(I) medical treatment;

(II) loss of consciousness;

(III) loss of work;

(IV) restriction of work; or

(V) transfer to another job.

(B) (I) Each employer shall file a subsequent report with the Division of Industrial Accidents of any previously reported injury or occupational disease that later resulted in death.

(II) The subsequent report shall be filed with the Division of Industrial Accidents within seven days following the death or the employer's first knowledge or notification of the death.

(iv) A report is not required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless a treating physician files, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with the Division of Industrial Accidents.

(v) A report is not required:

(A) for occupational diseases that manifest after the employee is no longer employed

by the employer with which the exposure occurred; or

(B) where the employer is not aware of an exposure occasioned by the employment which results in a compensable occupational disease as defined by Section 34A-3-103.

(vi) Each employer shall provide the employee with:

(A) a copy of the report submitted to the Division of Industrial Accidents; and

(B) a statement, as prepared by the Division of Industrial Accidents, of the employee's rights and responsibilities related to the industrial injury or occupational disease.

(vii) Each employer shall maintain a record in a manner prescribed by the commission of all work-related fatalities or work-related injuries and of all occupational diseases resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally recognized rules or standards on the reporting and recording of work-related injuries and occupational diseases.

(c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding exposures to potentially toxic materials or harmful physical agents required to be measured or monitored under Section 34A-6-202.

(ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their representatives:

(I) to observe the measuring or monitoring; and

(II) to have access to the records of the measuring or monitoring, and to records that indicate their exposure to toxic materials or harmful agents.

(B) Each employer shall promptly notify employees being exposed to toxic materials or harmful agents in concentrations that exceed prescribed levels and inform any such employee of the corrective action being taken.

(4) Information obtained by the division shall be obtained with a minimum burden upon employers, especially those operating small businesses.

(5) A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace. If there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(6) (a) (i) (A) Any employee or representative of employees who believes that a violation of an adopted safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the division's authorized representative of the violation or danger. The notice shall be:

(I) in writing, setting forth with reasonable particularity the grounds for notice; and

(II) signed by the employee or representative of employees.

(B) A copy of the notice shall be provided the employer or the employer's agent no later than at the time of inspection.

(C) Upon request of the person giving notice, the person's name and the names of individual employees referred to in the notice [~~shall not~~] may not appear in the copy or on any record published, released, or made available pursuant to Subsection (7).

(ii) (A) If upon receipt of the notice the division's authorized representative determines there are reasonable grounds to believe that a violation or danger exists, the authorized representative shall make a special inspection in accordance with this section as soon as practicable to determine if a violation or danger exists.

(B) If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, the authorized representative shall notify the employee or representative of the employees in writing of that determination.

(b) (i) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the division or its representative of any violation of a standard that they have reason to believe exists in the workplace.

(ii) The division shall:

(A) by rule, establish procedures for informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation; and

(B) furnish the employees or representative of employees requesting review a written statement of the reasons for the division's final disposition of the case.

(7) (a) The division may compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter, including rules for information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(8) Any employer who refuses or neglects to make reports, to maintain records, or to file reports with the commission as required by this section is guilty of a class C misdemeanor and subject to citation under Section 34A-6-302 and a civil assessment as provided under Section 34A-6-307, unless the commission finds that the employer has shown good cause for submitting a report later than required by this section.

Section 329. Section **34A-7-102** is amended to read:

34A-7-102. Standards for construction and design -- Special approved designs -- Maintenance requirements.

(1) For the purposes of this part, the standards for the design and construction of a new boiler and new pressure vessel shall be the latest applicable provisions of the Boiler and Pressure Vessel Code published by the American Society of Mechanical Engineers.

(2) This part [~~shall not~~] may not be construed as preventing the construction and use of a boiler or pressure vessel of special design:

(a) subject to approval of the Division of Boiler and Elevator Safety; and

(b) if the special design provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.

(3) A boiler and pressure vessel, including an existing boiler and pressure vessel, shall be maintained in safe operating condition for the service involved.

Section 330. Section **35A-3-106** is amended to read:

35A-3-106. Residency requirements.

To be eligible for public assistance under this chapter, an applicant [~~must~~] shall be living in Utah voluntarily with the intention of making this state the applicant's place of residence, and not for a temporary purpose.

Section 331. Section **35A-3-108** is amended to read:

35A-3-108. Assignment of support.

(1) (a) The division shall obtain an assignment of support from each applicant or client regardless of whether the payment is court ordered.

(b) Upon the receipt of assistance, any right to receive support from another person passes to the state, even if the client has not executed and delivered an assignment to the division as required by Subsection (1)(a).

(c) The right to support described in Subsection (1)(b) includes a right to support in the applicant's or client's own behalf or in behalf of any family member for whom the applicant or client is applying for or receiving assistance.

(2) An assignment of support or a passing of rights under Subsection (1)(b) includes payments ordered, decreed, or adjudged by any court within this state, any other state, or territory of the United States and is not in lieu of, and [~~shall not~~] does not supersede or alter, any other court order, decree, or judgment.

(3) When an assignment is executed or the right to support passes to the department under Subsection (1)(b), the applicant or client is eligible to regular monthly assistance and the support paid to the division is a refund.

(4) All sums refunded, except any amount which is required to be credited to the

federal government, shall be deposited into the General Fund.

(5) On and after the date a family stops receiving cash assistance, an assignment of support under Subsection (1) [~~shall not~~] does not apply to any support that accrued before the family received such assistance if the department has not collected the support by the date the family stops receiving cash assistance, if the assignment is executed on or after October 1, 1998.

(6) The department shall distribute arrearages to families in accordance with the Social Security Act, 42 U.S.C. Sec. 657.

(7) The total amount of child support assigned to the department and collected under this section may not exceed the total amount of cash assistance received by the recipient.

Section 332. Section **35A-3-304** is amended to read:

35A-3-304. Assessment -- Participation requirements and limitations -- Mentors.

(1) (a) Within 20 business days of the date of enrollment, a parent client shall:

(i) be assigned an employment counselor; and

(ii) complete an assessment provided by the division regarding the parent client's:

(A) family circumstances;

(B) education;

(C) work history;

(D) skills; and

(E) ability to become self-sufficient.

(b) The assessment provided under Subsection (1)(a)(ii) shall include a survey to be completed by the parent client with the assistance of the division.

(2) (a) Within 15 business days of a parent client completing an assessment, the division and the parent client shall enter into an employment plan.

(b) The employment plan shall have a target date for entry into employment.

(c) The division shall provide a copy of the employment plan to the parent client.

(d) As to the parent client, the plan may include:

(i) job searching requirements;

(ii) if the parent client does not have a high school diploma, participation in an educational program to obtain a high school diploma, or its equivalent;

(iii) education or training necessary to obtain employment;

(iv) a combination of work and education or training;

(v) assisting the Office of Recovery Services in good faith to:

(A) establish the paternity of a minor child; and

(B) establish or enforce a child support order; and

(vi) if the parent client is a drug dependent person as defined in Section 58-37-2, participation in available treatment for drug dependency and progress toward overcoming that dependency.

(e) As to the division, the plan may include:

(i) providing cash and other types of public and employment assistance, including child care;

(ii) assisting the parent client to obtain education or training necessary for employment;

(iii) assisting the parent client to set up and follow a household budget; and

(iv) assisting the parent client to obtain employment.

(f) The division may amend the employment plan to reflect new information or changed circumstances.

(g) If immediate employment is an activity contained in the employment plan the parent client shall:

(i) promptly commence a search for a specified number of hours each week for employment; and

(ii) regularly submit a report to the division on:

(A) how time was spent in search for a job;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the division.

(h) (i) If full-time education or training to secure employment is an activity contained in an employment plan, the parent client shall promptly undertake a full-time education or training program.

(ii) The employment plan may describe courses, education or training goals, and classroom hours.

(i) (i) As a condition of receiving cash assistance under this part, a parent client shall agree to make a good faith effort to comply with the employment plan.

(ii) If a parent client consistently fails to show good faith in complying with the employment plan, the division may seek under Subsection (2)(i)(iii) to terminate all or part of the cash assistance services provided under this part.

(iii) The division shall establish a process to reconcile disputes between a client and the division as to whether:

(A) the parent client has made a good faith effort to comply with the employment plan; or

(B) the division has complied with the employment plan.

(3) (a) Except as provided in Subsection (3)(b), a parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(i) 24 months; or

(ii) the completion of the education and training requirements of the employment plan.

(b) A parent client may participate in education or training for up to six months beyond the 24-month limit of Subsection (3)(a)(i) if:

(i) the parent client is employed for 80 or more hours a month; and

(ii) the extension is for good cause shown and approved by the director.

(c) A parent client who receives an extension under Subsection (3)(b) remains subject to Subsection (4).

(4) (a) A parent client with a high school diploma or equivalent who has received 24 months of education or training shall participate in full-time work activities.

(b) The 24 months need not be continuous and the department may define "full-time work activities" by rule.

(5) As a condition for receiving cash assistance on behalf of a minor child under this part, the minor child [~~must~~] shall be:

(a) enrolled in and attending school in compliance with Sections 53A-11-101.5 and 53A-11-101.7; or

(b) exempt from school attendance under Section 53A-11-102.

(6) This section does not apply to a person who has received diversion assistance under Section 35A-3-303.

(7) (a) The division shall recruit and train volunteers to serve as mentors for parent clients.

(b) A mentor may advocate on behalf of a parent client and help a parent client:

(i) develop life skills;

(ii) implement an employment plan; or

(iii) obtain services and supports from:

(A) the volunteer mentor;

(B) the division; or

(C) civic organizations.

Section 333. Section **35A-3-310.5** is amended to read:

35A-3-310.5. Child care providers -- Criminal background checks -- Payment of costs -- Prohibitions -- Department rules.

(1) This section applies to a child care provider who:

(a) is selected by an applicant for, or a recipient of, a child care assistance payment;

(b) is not required to undergo a criminal background check with the Department of Health, Bureau of Child Care Licensing;

(c) is not a license exempt child care center or program; and

(d) is an eligible child care provider under department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) Each child care provider identified under Subsection (1) shall submit to the department the name and other identifying information, which shall include a set of fingerprints, of:

(i) existing, new, and proposed providers of child care; and

(ii) individuals who are at least 18 years of age and reside in the premises where the child care is provided.

(b) The department may waive the fingerprint requirement under Subsection (2)(a) for an individual who has:

(i) resided in Utah for five years prior to the required submission; or

(ii) (A) previously submitted a set of fingerprints under this section for a national criminal history record check; and

(B) resided in Utah continuously since submitting the fingerprints.

(c) The Utah Division of Criminal Investigation and Technical Services shall process and conduct background checks on all individuals as requested by the department, including submitting the fingerprints to the U.S. Federal Bureau of Investigation for a national criminal history background check of the individual.

(d) If the department waives the fingerprint requirement under Subsection (2)(b), the Utah Division of Criminal Investigation and Technical Services may allow the department or its representative access to the division's data base to determine whether the individual has been convicted of a crime.

(e) The child care provider shall pay the cost of the history background check provided under Subsection (2)(c).

(3) (a) Each child care provider identified under Subsection (1) shall submit to the department the name and other identifying information of an individual, age 12 through 17, who resides in the premises where the child care is provided.

(b) The identifying information referred to in Subsection (3)(a) does not include fingerprints.

(c) The department or its representative shall access juvenile court records to determine

whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile court of committing an act which, if committed by an adult, would be a felony or misdemeanor if:

(i) the individual described in Subsection (2) is under the age of 28; or

(ii) the individual described in Subsection (2):

(A) is over the age of 28; and

(B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(4) Except as provided in Subsection (5), a child care provider under this section may not permit an individual who has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or if Subsection (3)(b) applies, an individual who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor to:

(a) provide subsidized child care; or

(b) reside at the premises where subsidized child care is provided.

(5) (a) The department may make a rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection (4):

(i) a specific misdemeanor;

(ii) a specific act adjudicated in juvenile court, which if committed by an adult would be a misdemeanor; and

(iii) background checks of individuals other than the provider who are residing at the premises where subsidized child care is provided if that child care is provided in the child's home.

(b) In accordance with criteria established by rule, the executive director or the director's designee may consider and exempt individual cases, not otherwise exempt under Subsection (5)(a), from the restrictions of Subsection (4).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

department shall establish by rule:

(a) whether a child care subsidy payment should be made prior to the completion of a background check, particularly in the case of a delay in making or completing the background check; and

(b) if, and how often, a child care provider [~~must~~] shall resubmit the information required under Subsections (2) and (3).

Section 334. Section **35A-3-503** is amended to read:

35A-3-503. Legislative intent.

(1) The Legislature finds that public policy should promote and encourage a strong civic sector. Civic organizations have an important role that cannot be adequately addressed through either private or public sector action. Important public values such as the condition of our neighborhoods, the character of our children, and the renewal of our cities directly depend on the strength of families, neighborhoods, and grassroots community organizations, as well as the vitality of private and religious institutions that care for those in need. Civic organizations transmit values between generations, encourage cooperation between citizens, and ensure that our communities are livable and nurturing environments. The value provided to the state by civic organizations is called social capital.

(2) The purpose of this part is to promote the availability of social capital. Using social capital, clients of and applicants for services under this chapter may receive a wide array of services and supports that cannot be provided by state government alone. Social capital links all parts of our society together by creating opportunities for service and giving. It facilitates trust and cooperation and enhances investments in physical and human capital.

(3) In enacting this part, the Legislature recognizes the constitutional limits of state government to sustain civic institutions that provide social capital. While state government has always depended on these institutions, it does not create them nor can it replace them. This part recognizes that state government [~~must~~] shall respect, recognize, and, wherever possible, constitutionally encourage strong civic institutions that sustain a sense of community and humanize our lives.

Section 335. Section **35A-4-303** is amended to read:

35A-4-303. Determination of contribution rates.

(1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio, determined by dividing the total benefit costs charged back to an employer during the immediately preceding four fiscal years by the total taxable wages of the employer for the same time period, calculated to four decimal places, disregarding the remaining fraction, if any.

(b) In calculating the basic contribution rate under Subsection (1)(a):

(i) if four fiscal years of data are not available, the data of three fiscal years shall be divided by the total taxable wages for the same time period;

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be divided by the total taxable wages for the same time period; or

(iii) if two fiscal years of data are not available, the data of one fiscal year shall be divided by the total taxable wages for the same time period.

(2) (a) In calculating the social contribution rate under Subsection (2)(b) or (c):

(i) if four fiscal years of data are not available, the data of three fiscal years shall be divided by the total taxable wages for the same time period; or

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be divided by the total taxable wages for the same time period.

(b) Beginning January 1, 2005, the division shall calculate the social contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction.

(c) Beginning January 1, 2009, the division shall calculate the social contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction, and rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or

more.

(3) (a) Beginning January 1, 2000, the division shall by administrative decision set the reserve factor at a rate that shall sustain an adequate reserve.

(b) For the purpose of setting the reserve factor:

(i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(B) beginning January 1, 2009, the adequate reserve is defined as between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;

(iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is greater than the adequate reserve;

(iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund balance as of June 30 prior to the computation date is less than the adequate reserve;

(v) if the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;

(vi) the reserve factor will be set on or before January 1 of each year; and

(vii) monies made available to the state under Section 903 of the Social Security Act, as amended, which are received on or after January 1, 2004, may not be considered in establishing the reserve factor under this section for the rate year 2005 or any subsequent rate year.

(4) (a) On or after January 1, 2004, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution

rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new employers.

(b) Beginning January 1, 2009, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3)(b), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 9%, plus the applicable social contribution rate and not less than 1.1% for new employers.

(c) The overall contribution rate does not include the addition of any penalty applicable to an employer as a result of delinquency in the payment of contributions as provided in Subsection (9).

(d) The overall contribution rate does not include the addition of any penalty applicable to an employer assessed a penalty rate under Subsection 35A-4-304(5)(a).

(5) Except as provided in Subsection (9), each new employer shall pay a contribution rate based on the average benefit cost rate experienced by employers of the major industry as defined by department rule to which the new employer belongs, the basic contribution rate to be determined as follows:

(a) Except as provided in Subsection (5)(b), by January 1 of each year, the basic contribution rate to be used in computing the employer's overall contribution rate is the benefit cost rate which is the greater of:

(i) the amount calculated by dividing the total benefit costs charged back to both active and inactive employers of the same major industry for the last two fiscal years by the total taxable wages paid by those employers that were paid during the same time period, computed to four decimal places, disregarding the remaining fraction, if any; or

(ii) 1%.

(b) If the major industrial classification assigned to a new employer is an industry for which a benefit cost rate does not exist because the industry has not operated in the state or has

not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This basic contribution rate is used in computing the employer's overall contribution rate.

(6) Notwithstanding any other provision of this chapter, and except as provided in Subsection (7), if an employing unit that moves into this state is declared to be a qualified employer because it has sufficient payroll and benefit cost experience under another state, a rate shall be computed on the same basis as a rate is computed for all other employers subject to this chapter if that unit furnishes adequate records on which to compute the rate.

(7) An employer who begins to operate in this state after having operated in another state shall be assigned the maximum overall contribution rate until the employer acquires sufficient experience in this state to be considered a "qualified employer" if the employer is:

(a) regularly engaged as a contractor in the construction, improvement, or repair of buildings, roads, or other structures on lands;

(b) generally regarded as being a construction contractor or a subcontractor specialized in some aspect of construction; or

(c) required to have a contractor's license or similar qualification under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

(8) (a) If an employer acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition or transfers its trade or business, or a portion of its trade or business, under Subsection 35A-4-304(3)(a):

(i) for purposes of determining and establishing the acquiring party's qualifications for an experience rating classification, the payrolls of both employers during the qualifying period shall be jointly considered in determining the period of liability with respect to:

(A) the filing of contribution reports;

(B) the payment of contributions; and

(C) after January 1, 1985, the benefit costs of both employers;

(ii) the transferring employer shall be divested of the transferring employer's unemployment experience provided the transferring employer had discontinued operations, but

only to the extent as defined under Subsection 35A-4-304(3)(c); and

(iii) if an employer transfers its trade or business, or a portion of its trade or business, as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its employer's unemployment experience.

(b) An employing unit or prospective employing unit that acquires the unemployment experience of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.

(c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of the employer's business to another and by ceasing operations as of the date of the transfer, the transferring employer shall cease to be an employer, as defined by this chapter, as of the date of transfer.

(9) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall contribution rate on or after January 1, 1988, only with respect to new employers and to those qualified employers who, except for amounts due under division determinations that have not become final, paid all contributions prescribed by the division with respect to the four consecutive calendar quarters in the fiscal year immediately preceding the computation date on or after January 1, 1985.

(b) Notwithstanding Subsections (1), (5), (6), and (8), on or after January 1, 1988, an employer who fails to pay all contributions prescribed by the division with respect to the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, except for amounts due under determinations that have not become final, shall pay a contribution rate equal to the overall contribution rate determined under the experience rating provisions of this chapter, plus a surcharge of 1% of wages.

(c) An employer who pays all required contributions shall, for the current contribution year, be assigned a rate based upon the employer's own experience as provided under the experience rating provisions of this chapter effective the first day of the calendar quarter in

which the payment was made.

(d) Delinquency in filing contribution reports [~~shall~~] may not be the basis for denial of a rate less than the maximum contribution rate.

Section 336. Section **35A-4-304** is amended to read:

35A-4-304. Special provisions regarding transfers of unemployment experience and assignment rates.

(1) As used in this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.

(c) "Trade or business" includes the employer's workforce.

(d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall apply regarding assignment of rates and transfers of unemployment experience.

(3) (a) If an employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is common ownership, management, or control of the employers, then the unemployment experience attributable to each employer shall be combined into a common experience rate calculation.

(b) The contribution rates of the employers shall be recalculated and made effective upon the date of the transfer of trade or business as determined by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) (i) If one or more of the employers is a qualified employer at the time of the transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)(d), using combined unemployment experience rating factors, for the rate year during which the transfer occurred and for the subsequent three rate years.

(ii) If none of the employing units is a qualified employer at the time of the transfer, then all employing units that are party to the transfer described in Subsection (3)(a) shall be assigned the highest overall contribution rate applicable at the time of the transfer to any employer who is party to the acquisition for the rate year during which the transfer occurred and for subsequent rate years until the time when one or more of the employing units is a qualified employer.

(iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified employer, all the employing units shall be assigned an overall rate under Subsection 35A-4-303(4)(d), using combined unemployment experience rating factors for subsequent rate years, not to exceed three years following the year of the transfer.

(d) The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of its trade or business when, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is now performed by the employer to whom the workforce is transferred.

(4) (a) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business [~~shall not~~] may not be transferred to that person if the division finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) The person shall be assigned the applicable new employer rate under Subsection 35A-4-303(5).

(c) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include:

(i) the cost of acquiring the business;

(ii) whether the person continued the business enterprise of the acquired business;

(iii) how long the business enterprise was continued; or

(iv) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of any of those subsections or provisions, the person is subject to the following penalties:

(i) (A) If the person is an employer, then the employer shall be assigned an overall contribution rate of 5.4% for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(B) If the person's business is already at 5.4% for any year, or if the amount of increase in the person's rate would be less than 2% for that year, then a penalty surcharge of contributions of 2% of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of not more than $5,000.

(B) The fine shall be deposited in the penalty and interest account established under Section 35A-4-506.

(b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this section may be prosecuted as unemployment insurance fraud.

(ii) The determination of the degree of an offense shall be measured by the total value of all contributions avoided or reduced or contributions sought to be avoided or reduced by the unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Section 337. Section **35A-4-305** is amended to read:

35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.

(1) (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.

(b) (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division are subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than $25 with respect to each reporting period.

(ii) If a report is filed after the required time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.

(c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.

(ii) A penalty may not attach if within 10 days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and payment is made in accordance with those arrangements.

(d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the service charge imposed by Section 7-15-1 for dishonored instruments if:

(i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and

(ii) the instrument is dishonored or not paid by the institution against which it is drawn.

(e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectible and removed from the records of the

division if:

(i) no assets belonging to the liable person and subject to attachment can be found; and

(ii) in the opinion of the division there is no likelihood of collection at a future date.

(f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Account created by Section 35A-4-506.

(g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

(2) (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of any information it may be able to obtain.

(b) The division shall give written notice of the determination to the employer.

(c) The determination is considered correct unless:

(i) the employer, within 10 days after mailing or personal delivery of notice of the determination, applies to the division for a review of the determination as provided in Section 35A-4-508; or

(ii) unless the division or its authorized representative of its own motion reviews the determination.

(d) The amount of contribution determined under Subsection (2)(a) is subject to penalties and interest as provided in Subsection (1).

(3) (a) If, after due notice, an employer defaults in the payment of contributions, interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.

(b) Civil actions brought under this section to collect contributions, interest, or

penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

(i) heard by the court at the earliest possible date; and

(ii) entitled to preference upon the calendar of the court over all other civil actions except:

(A) petitions for judicial review under this chapter; and

(B) cases arising under the workers' compensation law of this state.

(c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments and penalties due from employers or claimants located outside Utah, the division may employ private collectors providing debt collection services outside Utah.

(B) Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action.

(C) The notice shall advise the employer or claimant of the employer's or claimant's rights under this chapter and the applicable rules of the department.

(ii) (A) A private collector may receive as compensation up to 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or postjudgment remedy instituted by the private collector with the approval of the division.

(B) The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.

(iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

(iv) (A) A civil action may not be maintained by a private collector without specific prior written approval of the division.

(B) When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.

(d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer

or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).

(ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent disclosure is necessary in a civil action to enforce collection of the amounts due.

(e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.

(4) (a) In the event of a distribution of an employer's assets under an order of a court under the laws of Utah, including a receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $400 to each claimant, earned within five months of the commencement of the proceeding.

(b) If an employer commences a proceeding in the Federal Bankruptcy Court under a chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

(5) (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the contributions due, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund the money collected by virtue of the warrant by a time to be specified in the warrant, not more than 60 days from the date of the warrant.

(b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the

duplicate with the clerk of the district court in the sheriff's county.

(ii) The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

(c) The amount of the docketed warrant shall:

(i) have the force and effect of an execution against all personal property of the delinquent employer; and

(ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by a district court and docketed in the office of the clerk.

(d) After docketing, the sheriff shall:

(i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and

(ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner.

(6) (a) Contributions imposed by this chapter are a lien upon the property of an employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.

(b) (i) An employer's successor, successors, or assigns, if any, are required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until the former owner produces a receipt from the division showing that they have been paid or a certificate stating that no amount is due.

(ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser is personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the

former owner, owners, or assignors.

(7) (a) If an employer is delinquent in the payment of a contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.

(b) A person notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:

(i) the division has consented to a transfer or disposition; or

(ii) 20 days after the receipt of the notice.

(c) All persons notified under Subsection (7)(a) shall, within five days after receipt of the notice, advise the division of credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.

(8) (a) (i) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter.

(ii) The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.

(b) (i) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period.

(ii) The report shall be on a form prescribed by the division and contain all information prescribed by the division.

(c) (i) For each failure by an employer to conform to this Subsection (8) the division shall, unless good cause is shown, assess a $50 penalty if the filing was not more than 15 days late.

(ii) If the filing is more than 15 days late, the division shall assess an additional penalty of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250

per filing.

(iii) The penalty is to be collected in the same manner as contributions due under this chapter.

(d) (i) The division shall prescribe rules providing standards for determining which contribution reports [~~must~~] shall be filed on magnetic or electronic media or in other machine-readable form.

(ii) In prescribing these rules, the division:

(A) may not require an employer to file contribution reports on magnetic or electronic media unless the employer is required to file wage data on at least 250 employees during any calendar quarter or is an authorized employer representative who files quarterly tax reports on behalf of 100 or more employers during any calendar quarter;

(B) shall take into account, among other relevant factors, the ability of the employer to comply at reasonable cost with the requirements of the rules; and

(C) may require an employer to post a bond for failure to comply with the rules required by this Subsection (8)(d).

(9) (a) (i) An employer liable for payments in lieu of contributions shall file Reimbursable Employment and Wage Reports.

(ii) The reports are due on the last day of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date.

(iii) A report postmarked on or before the due date is considered timely.

(b) (i) Unless the employer can show good cause, the division shall assess a $50 penalty against an employer who does not file Reimbursable Employment and Wage Reports within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

(ii) If the filing is more than 15 days late, the division shall assess an additional penalty of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250 per filing.

(iii) The division shall assess and collect the penalties referred to in this Subsection (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

(10) If a person liable to pay a contribution or benefit overpayment imposed by this chapter neglects or refuses to pay it after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.

(11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

(b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a warrant with the clerk of the district court.

(ii) For the purposes of this Subsection (11)(b):

(A) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.

(B) "Mechanics' lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.

(C) "Person" means:

(I) an individual;

(II) a trust;

(III) an estate;

(IV) a partnership;

(V) an association;

(VI) a company;

(VII) a limited liability company;

(VIII) a limited liability partnership; or

(IX) a corporation.

(D) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.

(E) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:

(I) the property is in existence and the interest has become protected under the law against a subsequent judgment lien arising out of an unsecured obligation; and

(II) to the extent that, at that time, the holder has parted with money or money's worth.

Section 338. Section **35A-4-309** is amended to read:

35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of contributions.

(1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:

(a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of the nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.

(b) (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect

to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter.

(ii) The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.

(d) (i) Any nonprofit organization that has been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions.

(ii) This election is not terminable by the organization for that year or the next year.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination [~~must~~] shall be filed and may permit an election to be retroactive.

(f) (i) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election.

(ii) These determinations are subject to reconsideration, appeal, and review in accordance with Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with this Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of nonprofit

organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus [~~1/2~~] one-half of the amount of extended benefits paid during this month or other prescribed period that is attributable to service in the employ of the organization.

(b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(d).

(c) Payments made by any nonprofit organization under this Subsection (2) may not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(d) (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Division of Adjudication, setting forth the grounds for the application or appeal in accordance with Section 35A-4-508.

(ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.

(iii) Any redetermination is conclusive on the organization unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Division of Adjudication in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.

(iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.

(e) Past due payments of amounts in lieu of contributions are subject to the same

interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination is effective for that and the next contribution year.

(4) (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division.

(b) The amount of the deposit shall be determined in accordance with this Subsection (4).

(c) (i) The amount of the deposit required by this Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable.

(ii) If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit is as determined by the division.

(d) (i) Any deposit of money in accordance with this Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this Subsection (4).

(ii) The division may deduct from the money deposited under this Subsection (4) by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(e).

(iii) The division shall require the organization within 30 days following any deduction from a money deposit under this Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.

(iv) (A) The division may, at any time, review the adequacy of the deposit made by any

organization.

(B) If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within 30 days of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as considered appropriate.

(e) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.

(f) (i) Termination under Subsection (4)(e) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.

(ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.

(5) (a) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of [~~1/2~~] one-half of extended benefits paid that are attributable to service in the employ of the employer.

(b) If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (5)(c) or (d).

(c) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by that employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(d) If benefits paid to an individual are based on wages paid by two or more employers

who are liable for payments in lieu of contributions, the amount of benefits payable by each of those employers shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(6) (a) (i) Two or more employers who have become liable for payments in lieu of contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers.

(ii) Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).

(b) (i) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account.

(ii) This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group is liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

(d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.

(7) (a) An employing unit that acquires a nonprofit organization or substantially all the assets of a nonprofit organization that has elected reimbursable coverage as defined in

Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.

(b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Section 339. Section **35A-4-311** is amended to read:

35A-4-311. Coverage and liability of governmental units or Indian tribal units -- Payments in lieu of contributions -- Delinquencies -- Payments to division.

(1) Notwithstanding any other provisions of this chapter, benefits paid to employees of counties, cities, towns, school districts, political subdivisions, or their instrumentalities or Indian tribes or tribal units shall be financed in accordance with the following provisions:

(a) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay contributions under the provisions of Section 35A-4-302, or may elect to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and, as provided in Subsection (4), the extended benefits attributable to service in the employ of such organization, and paid to individuals for weeks of unemployment that begin during the effective period of such election.

(b) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter by filing a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any county, city, town, school district, political subdivision, or instrumentality thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election

in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election. A notice terminating such election [~~must~~] shall be filed by January 31 of the year in which the termination is to be effective.

(d) Any county, city, town, school district, political subdivision, or instrumentality thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions; the organization may not terminate such election for a period of two contribution years.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination [~~must~~] shall be filed and may permit an election to be retroactive.

(f) The division, in accordance with department rules, shall notify each county, city, town, school district, political subdivision, or Indian tribes or tribal units, or their instrumentalities of any determination that it may make of its status as an employer, or the effective date of any election which it makes, and of any termination of such election. The determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each county, city, town, school district, political subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits and, as provided in Subsection (4), the amount of extended benefits paid during such month or other prescribed period that is attributable to service in the employ of such county, city, town, school district, political subdivision, or instrumentality thereof.

(b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(c).

(c) (i) The amount due specified in any bill from the division shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or otherwise delivered to it, the governmental unit or tribal unit files an application for redetermination by the division or an appeal, setting forth the grounds for such application or appeal.

(ii) Upon an application for redetermination the division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination.

(iii) Any such redetermination shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the grounds for the appeal.

(iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with the provisions of Section 35A-4-508.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3) (a) If any governmental unit or tribal unit is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the governmental unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination shall be effective for that and the next contribution year.

(b) (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in

Subsection 35A-4-311(1), for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option reinstated if, after a period of one year:

(A) all contributions have been made timely; and

(B) no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act; and

(B) will cause the Indian tribe to lose the option to make payments in lieu of contributions.

(4) Each governmental unit or tribal unit liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of extended benefits paid that are attributable to service in the employ of such governmental unit or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of contributions shall, with respect to extended benefit costs for weeks of unemployment beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979, shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (4)(a) or (4)(b).

(a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer

that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(5) (a) Two or more Indian tribe or tribal unit employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (5).

(b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than one contribution year and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

Section 340. Section **35A-4-404** is amended to read:

35A-4-404. Eligibility for benefits after receiving workers' compensation or

occupational disease compensation.

(1) Notwithstanding any requirements involving base periods or other benefit compensational factors provided for under this chapter a person who has had a continuous period of sickness or injury for which [~~he~~] the person was compensated under the workers' compensation or the occupational disease laws of this state or under federal law shall, if [~~he~~] the person is otherwise eligible, thereafter be entitled to receive the unemployment compensation benefits [~~he~~] the person would have been entitled to receive under the law and regulations based on [~~his~~] the person's potential eligibility at the time of [~~his~~] the person's last employment.

(2) Benefit rights [~~shall not be~~] are not preserved under this section unless the individual:

(a) files a claim for benefits with respect to a week no later than 90 days after the end of the continuous period of sickness or injury; and

(b) files the claim with respect to a week within the 36-month period immediately following the commencement of such period of sickness or injury.

Section 341. Section **35A-4-501** is amended to read:

35A-4-501. Unemployment Compensation Fund -- Administration -- Contents -- Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances under Social Security Act.

(1) (a) There is established the Unemployment Compensation Fund, separate and apart from all public money or funds of this state, that shall be administered by the department exclusively for the purposes of this chapter.

(b) This fund shall consist of the following money, all of which shall be mingled and undivided:

(i) all contributions collected under this chapter, less refunds of contributions made from the clearing account under Subsection 35A-4-306(5);

(ii) interest earned upon any money in the fund;

(iii) any property or securities acquired through the use of money belonging to the

fund;

(iv) all earnings of the property or securities;

(v) all money credited to this state's account in the unemployment trust fund under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and

(vi) all other money received for the fund from any other source.

(2) (a) The state treasurer shall:

(i) be the treasurer and custodian of the fund;

(ii) administer the fund in accordance with the directions of the division; and

(iii) pay all warrants drawn upon it by the division or its duly authorized agent in accordance with rules made by the department.

(b) The division shall maintain within the fund three separate accounts:

(i) a clearing account;

(ii) an unemployment trust fund account; and

(iii) a benefit account.

(c) All money payable to the fund, upon receipt by the division, shall be immediately deposited in the clearing account.

(d) (i) All money in the clearing account after clearance shall, except as otherwise provided in this section, be deposited immediately with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(ii) Refunds of contributions payable under Subsections 35A-4-205(1)(a) and 35A-4-306(5) may be paid from the clearing account or the benefit account.

(e) The benefit account shall consist of all money requisitioned from this state's account in the unemployment trust fund in the United States treasury.

(f) Money in the clearing and benefit accounts may be deposited in any depository bank

in which general funds of this state may be deposited, but no public deposit insurance charge or premium may be paid out of the fund.

(g) (i) Money in the clearing and benefit accounts may not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank.

(ii) The money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state.

(iii) Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state.

(h) (i) The state treasurer is liable on the state treasurer's official bond for the faithful performance of the state treasurer's duties in connection with the unemployment compensation fund provided for under this chapter.

(ii) The liability on the official bond shall be effective immediately upon the enactment of this provision, and that liability shall exist in addition to the liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.

(iii) All sums recovered for losses sustained by the fund shall be deposited in the fund.

(3) (a) (i) Money requisitioned from the state's account in the unemployment trust fund shall, except as set forth in this section, be used exclusively for the payment of benefits and for refunds of contributions under Subsections 35A-4-205(1)(a) and 35A-4-306(5).

(ii) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts standing to this state's account in the fund, as it considers necessary for the payment of those benefits and refunds for a reasonable future period.

(iii) (A) Upon receipt the treasurer shall deposit the money in the benefit account and shall pay benefits and refunds from the account by means of warrants issued by the division in accordance with rules prescribed by the department.

(B) Expenditures of these money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(b) Money in the state's account in the unemployment trust fund that were collected under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to the state under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended may be requisitioned from the state's account and used in the payment of expenses incurred by the department for the administration of the state's unemployment law and public employment offices, if the expenses are incurred and the withdrawals are made only after and under a specific appropriation of the Legislature that specifies:

(i) the purposes and amounts;

(ii) that the money may not be obligated after the two-year period that began on the date of the enactment of the appropriation law; and

(iii) that the total amount which may be used during a fiscal year [~~shall not~~] may not exceed the amount by which the aggregate of the amounts credited to this state's account under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state for administration during the same 35 fiscal years.

(A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall be charged against equivalent amounts that were first credited and that have not previously been so charged. An amount used during any fiscal year may not be charged against any amount credited during a fiscal year earlier than the 34th preceding fiscal year.

(B) Except as appropriated and used for administrative expenses, as provided in this section, money transferred to this state under Section 903 of the Social Security Act as amended, may be used only for the payment of benefits.

(C) Any money used for the payment of benefits may be restored for appropriation and use for administrative expenses, upon request of the governor, under Section 903(c) of the Social Security Act.

(D) The division shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited.

(E) Money deposited shall, until expended, remain a part of the unemployment fund

and, if not expended, shall be returned promptly to the account of this state in the unemployment trust fund.

(F) The money available by reason of this legislative appropriation [~~shall not~~] may not be expended or available for expenditure in any manner that would permit their substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(c) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or in the discretion of the division, shall be redeposited with the secretary of the treasury of the United States of America to the credit of the state's account in the unemployment trust fund, as provided in Subsection (2).

(4) (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to the unemployment trust fund, shall be operative only so long as the unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for the state a separate book account of all money deposited in the fund by the state for benefit purposes, together with the state's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals.

(b) (i) When the unemployment trust fund ceases to exist, or the separate book account is no longer maintained, all money belonging to the unemployment compensation fund of the state shall be administered by the division as a trust fund for the purpose of paying benefits under this chapter, and the division shall have authority to hold, invest, transfer, sell, deposit, and release the money, and any properties, securities, or earnings acquired as an incident to the administration.

(ii) The money shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America, of the state, or of any county, city, town, or school district of the state, at current market prices for the bonds.

(iii) The investment shall be made so that all the assets of the fund shall always be

readily convertible into cash when needed for the payment of benefits.

Section 342. Section **35A-4-506** is amended to read:

35A-4-506. Special Administrative Account.

(1) There is created a restricted account within the General Fund known as the "Special Administrative Expense Account."

(2) (a) Interest and penalties collected under this chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of the restricted account at the end of each calendar month.

(b) A contribution to the restricted account and any other money received for that purpose shall be paid into the restricted account.

(c) The money may not be expended in any manner that would permit their substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(3) Nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures, necessary and proper under this chapter, for which federal funds have been duly requested but not yet received subject to the charging of those expenditures against the funds when received.

(4) Money in the restricted account shall be deposited, administered, and dispersed in accordance with the directions of the Legislature.

(5) Money in the restricted account is made available to replace, within a reasonable time, any money received by this state under Section 302 of the Federal Social Security Act, 42 U.S.C. 502, as amended, that because of any action of contingency have been lost or have been expended for purposes other than or in amounts in excess of those necessary for the proper administration of this chapter.

(6) Money in the restricted account shall be available to the division for expenditure in accordance with this section and [~~shall not~~] may not lapse at any time or be transferred to any other fund or account except as directed by the Legislature.

(7) The state treasurer shall pay all warrants drawn upon it by the division or its duly

authorized agent in accordance with such rules as the department shall prescribe.

(8) (a) The state treasurer shall be liable on the state treasurer's official bond for the faithful performance of the treasurer's duties in connection with the Special Administrative Expense Account provided for under this chapter.

(b) Liability on the official bond shall exist in addition to any liability upon any separate bond existent on the effective date of this provision or that may be given in the future.

(c) Any money recovered on any surety bond losses sustained by the Special Administrative Expense Account shall be deposited in the restricted account or in the General Fund if so directed by the Legislature.

Section 343. Section **55-5-2** is amended to read:

55-5-2. Licensing agency -- Duties of Utah State Office of Rehabilitation.

(1) The [~~Division of Vocational Rehabilitation, Office of Public Instruction,~~] Division of Services for the Blind and Visually Impaired, Utah State Office of Rehabilitation is designated as the licensing agency for the purpose of carrying out [~~the provisions of this act, and shall~~] this chapter.

[~~(1) Take such steps as are necessary and proper~~]

(2) The Division of Services for the Blind and Visually Impaired, shall:

(a) take necessary steps to carry out the provisions of this [~~act.~~] chapter;

[~~(2) With~~] (b) with the approval of the custodian having charge of the building, park or other property in which the vending stand or other enterprise is to be located, select a location for such stand or enterprise and the type of equipment to be provided[~~.~~];

[~~(3) Construct~~] (c) construct and equip stands [~~at such place as may be deemed advisable~~] where blind persons may be trained under the supervision of the [~~Division of Vocational Rehabilitation~~] Division of Services for the Blind and Visually Impaired to carry on a business as a vending stand operator[~~.~~];

[~~(4) Provide~~] (d) provide adequate supervision of [~~such persons~~] each person licensed to operate vending stands or other enterprises to ensure efficient and orderly management [~~thereof.~~]; and

[~~(5) Prescribe such rules and regulations as are~~]

(e) make rules necessary for the proper operation of [~~such~~] vending stands or other enterprises.

Section 344. **Effective date.**

(1) Except as provided in Subsections (2) and (3), this bill takes effect on May 10, 2011.

(2) The amendments to the following sections take effect on July 1, 2011:

(a) Section 32B-1-407 (Effective 07/01/11);

(b) Section 32B-1-505 (Effective 07/01/11);

(c) Section 32B-6-407 (Effective 07/01/11); and

(d) Section 32B-8-304 (Effective 07/01/11).

(3) The amendments to Section 20A-7-702 (Effective 01/01/12) take effect on January 1, 2012.