

**Senator Leonard M. Blackham** proposes the following substitute bill:

**GOVERNMENTAL IMMUNITY ACT OF UTAH**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

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**LONG TITLE**

**General Description:**

This bill enacts a new governmental immunity act.

**Highlighted Provisions:**

This bill:

- ▶ defines the scope of liability and immunity of Utah's state and local governments and their employees;
- ▶ defines terms;
- ▶ establishes immunity from suit for injuries that result from the exercise of a government function;
- ▶ waives government immunity from suit for certain specific governmental functions and provides exceptions to certain of those waivers;
- ▶ establishes procedures for making claims against a government entity or employee when an alleged injury has occurred;
- ▶ establishes jurisdiction and venue requirements for actions against government entities and employees;
- ▶ defines certain procedures and requirements for legal actions brought under this chapter;
- ▶ establishes a process for submitting claims for payment to a government entity and authorizes certain options that government entities may use to pay claims;



- 26           ▶ authorizes government entities to self-insure or purchase liability insurance for
- 27 potential claims against the entity and establishes procedures and requirements for
- 28 implementing those options;
- 29           ▶ establishes limits on judgments against government entities or employees;
- 30           ▶ addresses legal representation and settlement authority for claims against executive,
- 31 legislative, and judicial entities and employees;
- 32           ▶ establishes a process for defending employees generally when claims are asserted
- 33 against them and defines the scope of that representation; and
- 34           ▶ makes technical corrections.

35 **Monies Appropriated in this Bill:**

36           None

37 **Other Special Clauses:**

38           This bill provides a transition clause.

39           This bill takes effect on July 1, 2004.

40           This bill provides a coordination clause enacting Section 63-30d-203, if S.B. 9 passes

41 and certain conditions are met.

42           This bill provides a coordination clause amending Section 63-30d-401, if H.B. 111

43 passes.

44 **Utah Code Sections Affected:**

45 AMENDS:

46           **7-2-9**, as last amended by Chapter 177, Laws of Utah 1990

47           **17-50-401**, as enacted by Chapter 133, Laws of Utah 2000

48           **17A-2-1830**, as enacted by Chapter 216, Laws of Utah 1995

49           **31A-1-301**, as last amended by Chapters 131 and 298, Laws of Utah 2003

50           **31A-2-306**, as last amended by Chapter 161, Laws of Utah 1987

51           **31A-12-107**, as last amended by Chapter 71, Laws of Utah 2002

52           **31A-22-305**, as last amended by Chapters 76 and 218, Laws of Utah 2003

53           **63-30a-3**, as last amended by Chapter 30, Laws of Utah 1987

54           **63-56-59**, as last amended by Chapter 178, Laws of Utah 2002

55           **76-6-513**, as last amended by Chapter 291, Laws of Utah 1995

56           **78-3a-113 (Superseded 07/01/04)**, as renumbered and amended by Chapter 365, Laws

57 of Utah 1997  
58 **78-3a-113 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003  
59 **78-3a-114 (Superseded 07/01/04)**, as renumbered and amended by Chapter 365, Laws  
60 of Utah 1997  
61 **78-3a-114 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003  
62 **78-3a-118 (Superseded 07/01/04)**, as last amended by Chapters 68, 176, 195 and 278,  
63 Laws of Utah 2003  
64 **78-3a-118 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003  
65 **78-17-3**, as enacted by Chapter 143, Laws of Utah 1986  
66 **78-19-1**, as enacted by Chapter 4, Laws of Utah 1990

67 ENACTS:

68 **63-30d-101**, Utah Code Annotated 1953  
69 **63-30d-102**, Utah Code Annotated 1953  
70 **63-30d-201**, Utah Code Annotated 1953  
71 **63-30d-202**, Utah Code Annotated 1953  
72 **63-30d-301**, Utah Code Annotated 1953  
73 **63-30d-302**, Utah Code Annotated 1953  
74 **63-30d-401**, Utah Code Annotated 1953  
75 **63-30d-402**, Utah Code Annotated 1953  
76 **63-30d-403**, Utah Code Annotated 1953  
77 **63-30d-501**, Utah Code Annotated 1953  
78 **63-30d-502**, Utah Code Annotated 1953  
79 **63-30d-601**, Utah Code Annotated 1953  
80 **63-30d-602**, Utah Code Annotated 1953  
81 **63-30d-603**, Utah Code Annotated 1953  
82 **63-30d-604**, Utah Code Annotated 1953  
83 **63-30d-701**, Utah Code Annotated 1953  
84 **63-30d-702**, Utah Code Annotated 1953  
85 **63-30d-703**, Utah Code Annotated 1953  
86 **63-30d-704**, Utah Code Annotated 1953  
87 **63-30d-801**, Utah Code Annotated 1953

- 88           **63-30d-802**, Utah Code Annotated 1953
- 89           **63-30d-803**, Utah Code Annotated 1953
- 90           **63-30d-804**, Utah Code Annotated 1953
- 91           **63-30d-805**, Utah Code Annotated 1953
- 92           **63-30d-901**, Utah Code Annotated 1953
- 93           **63-30d-902**, Utah Code Annotated 1953
- 94           **63-30d-903**, Utah Code Annotated 1953
- 95           **63-30d-904**, Utah Code Annotated 1953

96 REPEALS:

- 97           **63-30-1**, as enacted by Chapter 139, Laws of Utah 1965
- 98           **63-30-2**, as last amended by Chapter 224, Laws of Utah 2000
- 99           **63-30-3**, as last amended by Chapter 3, Laws of Utah 2003
- 100          **63-30-4**, as last amended by Chapter 206, Laws of Utah 2002
- 101          **63-30-5**, as last amended by Chapter 251, Laws of Utah 1991
- 102          **63-30-6**, as enacted by Chapter 139, Laws of Utah 1965
- 103          **63-30-7**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 104          **63-30-8**, as last amended by Chapter 76, Laws of Utah 1991
- 105          **63-30-9**, as last amended by Chapter 76, Laws of Utah 1991
- 106          **63-30-10**, as last amended by Chapter 185, Laws of Utah 2001
- 107          **63-30-10.5**, as last amended by Chapter 76, Laws of Utah 1991
- 108          **63-30-10.6**, as last amended by Chapter 280, Laws of Utah 1992
- 109          **63-30-11**, as last amended by Chapter 157, Laws of Utah 2000
- 110          **63-30-12**, as last amended by Chapter 164, Laws of Utah 1998
- 111          **63-30-13**, as last amended by Chapter 164, Laws of Utah 1998
- 112          **63-30-14**, as enacted by Chapter 139, Laws of Utah 1965
- 113          **63-30-15**, as last amended by Chapter 75, Laws of Utah 1987
- 114          **63-30-16**, as last amended by Chapter 166, Laws of Utah 1999
- 115          **63-30-17**, as last amended by Chapter 129, Laws of Utah 1983
- 116          **63-30-18**, as last amended by Chapter 313, Laws of Utah 1995
- 117          **63-30-19**, as enacted by Chapter 139, Laws of Utah 1965
- 118          **63-30-20**, as enacted by Chapter 139, Laws of Utah 1965

- 119            **63-30-22**, as last amended by Chapter 67, Laws of Utah 1991
- 120            **63-30-23**, as last amended by Chapter 75, Laws of Utah 1987
- 121            **63-30-24**, as enacted by Chapter 139, Laws of Utah 1965
- 122            **63-30-25**, as enacted by Chapter 139, Laws of Utah 1965
- 123            **63-30-26**, as last amended by Chapter 129, Laws of Utah 1983
- 124            **63-30-27**, as last amended by Chapter 3, Laws of Utah 1988
- 125            **63-30-28**, as last amended by Chapter 203, Laws of Utah 1991
- 126            **63-30-29.5**, as last amended by Chapter 242, Laws of Utah 1985
- 127            **63-30-31**, as last amended by Chapter 129, Laws of Utah 1983
- 128            **63-30-32**, as last amended by Chapter 129, Laws of Utah 1983
- 129            **63-30-33**, as last amended by Chapter 76, Laws of Utah 1991
- 130            **63-30-34**, as last amended by Chapter 157, Laws of Utah 2000
- 131            **63-30-35**, as last amended by Chapter 97, Laws of Utah 1990
- 132            **63-30-36**, as last amended by Chapter 206, Laws of Utah 2002
- 133            **63-30-37**, as last amended by Chapter 30, Laws of Utah 1987
- 134            **63-30-38**, as enacted by Chapter 131, Laws of Utah 1983
- 135            **78-60-101**, as enacted by Chapter 180, Laws of Utah 2003
- 136            **78-60-102**, as enacted by Chapter 180, Laws of Utah 2003
- 137            **78-60-103**, as enacted by Chapter 180, Laws of Utah 2003

**Uncodified Material Affected:**

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **7-2-9** is amended to read:

**7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment of receiver -- Review of actions.**

(1) Upon taking possession of the institution, the commissioner may appoint a receiver to perform the duties of the commissioner. Subject to any limitations, conditions, or requirements specified by the commissioner and approved by the court, a receiver shall have all the powers and duties of the commissioner under this chapter and the laws of this state to act as a conservator, receiver, or liquidator of the institution. Actions of the commissioner in

150 appointing a receiver shall be subject to review only as provided in Section 7-2-2.

151 (2) (a) If the deposits of the institution are to any extent insured by a federal deposit  
152 insurance agency, the commissioner may appoint that agency as receiver. After receiving  
153 notice in writing of the acceptance of the appointment, the commissioner shall file a certificate  
154 of appointment in his office and with the clerk of the district court. After the filing of the  
155 certificate, the possession of all assets, business, and property of the institution is considered  
156 transferred from the institution and the commissioner to the agency, and title to all assets,  
157 business, and property of the institution is vested in the agency without the execution of any  
158 instruments of conveyance, assignment, transfer, or endorsement.

159 (b) If a federal deposit insurance agency accepts an appointment as receiver, it has all  
160 the powers and privileges provided by the laws of this state and the United States with respect  
161 to the conservatorship, receivership, or liquidation of an institution and the rights of its  
162 depositors, and other creditors, including authority to make an agreement for the purchase of  
163 assets and assumption of deposit and other liabilities by another depository institution or take  
164 other action authorized by Title 12 of the United States Code to maintain the stability of the  
165 banking system. Such action by a federal deposit insurance agency may be taken upon  
166 approval by the court, with or without prior notice. Such actions or agreements may be  
167 disapproved, amended, or rescinded only upon a finding by the court that the decisions or  
168 actions of the receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of  
169 any conflict between state and federal law, including provisions for adjudicating claims against  
170 the institution or receiver, the receiver shall comply with the federal law and any resulting  
171 violation of state law shall not by itself constitute grounds for the court to disapprove the  
172 actions of the receiver or impose any penalty for such violation.

173 (c) The commissioner or any receiver appointed by him shall possess all the rights and  
174 claims of the institution against any person whose breach of fiduciary duty or violations of the  
175 laws of this state or the United States applicable to depository institutions may have caused or  
176 contributed to a condition which resulted in any loss incurred by the institution or to its assets  
177 in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary  
178 duty includes those duties and standards applicable under statutes and laws of this state and the  
179 United States to a director, officer, or other party employed by or rendering professional  
180 services to a depository institution whose deposits are insured by a federal deposit insurance

181 agency. Upon taking possession of an institution, no person other than the commissioner or  
182 receiver shall have standing to assert any such right or claim of the institution, including its  
183 depositors, creditors, or shareholders unless the right or claim has been abandoned by the  
184 commissioner or receiver with approval of the court. Any judgment based on the rights and  
185 claims of the commissioner or receiver shall have priority in payment from the assets of the  
186 judgment debtors.

187 (d) For the purposes of this section, the term "federal deposit insurance agency" shall  
188 include the Federal Deposit Insurance Corporation, the National Credit Union Administration  
189 and any departments thereof or successors thereto, and any other federal agency authorized by  
190 federal law to act as a conservator, receiver, and liquidator of a federally insured depository  
191 institution, including the Resolution Trust Corporation and any department thereof or successor  
192 thereto.

193 (3) The receiver may employ assistants, agents, accountants, and legal counsel. If the  
194 receiver is not a federal deposit insurance agency, the compensation to be paid such assistants,  
195 agents, accountants, and legal counsel shall be approved by the commissioner. All expenses  
196 incident to the receivership shall be paid out of the assets of the institution. If a receiver is not  
197 a federal deposit insurance agency, the receiver and any assistants and agents shall provide  
198 bond or other security specified by the commissioner and approved by the court for the faithful  
199 discharge of all duties and responsibilities in connection with the receivership including the  
200 accounting for money received and paid. The cost of the bond shall be paid from the assets of  
201 the institution. Suit may be maintained on the bond by the commissioner or by any person  
202 injured by a breach of the condition of the bond.

203 (4) (a) Upon the appointment of a receiver for an institution in possession pursuant to  
204 this chapter, the commissioner and the department are exempt from liability or damages for any  
205 act or omission of any receiver appointed pursuant to this section.

206 (b) This section does not limit the right of the commissioner to prescribe and enforce  
207 rules regulating a receiver in carrying out its duties with respect to an institution subject to the  
208 jurisdiction of the department.

209 (c) Any act or omission of the commissioner or of any federal deposit insurance agency  
210 as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the  
211 exercise of a discretionary function within the meaning of Section ~~[63-30-10]~~ 63-30d-301 of

212 the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.

213 (5) Actions, decisions, or agreements of a receiver under this chapter, other than  
214 allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review  
215 only as follows:

216 (a) A petition for review shall be filed with the court having jurisdiction under Section  
217 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or  
218 its terms are filed with the court.

219 (b) The petition shall state in simple, concise, and direct terms the facts and principles  
220 of law upon which the petitioner claims the act, decision, or agreement of the receiver was or  
221 would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may  
222 be damaged thereby. The court shall dismiss any petition which fails to allege that the  
223 petitioner would be directly injured or damaged by the act, decision, or agreement which is the  
224 subject of the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties  
225 with respect to the allegations set forth in a petition or response.

226 (c) The receiver shall have 30 days after service of the petition within which to  
227 respond.

228 (d) All further proceedings are to be conducted in accordance with the Utah Rules of  
229 Civil Procedure.

230 (6) All notices required under this section shall be made in accordance with the Utah  
231 Rules of Civil Procedure and served upon the attorney general of the state of Utah, the  
232 commissioner of financial institutions, the receiver of the institution appointed under this  
233 chapter, and upon the designated representative of any party in interest who requests in writing  
234 such notice.

235 Section 2. Section **17-50-401** is amended to read:

236 **17-50-401. Review of claims by county executive -- Auditor review -- Attorney**  
237 **review -- Claim requirements -- Approval or disapproval of claim.**

238 (1) Subject to Subsection (3), each county executive shall review each claim against  
239 the county and disapprove or, if payment appears to the county executive to be just, lawful, and  
240 properly due and owing, approve the claim.

241 (2) Upon receiving a notice of claim under Section [~~63-30-11~~] 63-30d-401, the county  
242 clerk shall deliver the notice of claim to the county executive.

243 (3) (a) The county executive shall forward all claims regarding liability to the county  
244 attorney, or, in a county that has a district attorney but not a county attorney, to the district  
245 attorney for the attorney's review and recommendation to the county executive regarding  
246 liability and payment.

247 (b) Except as provided in Section 17-50-405, the county executive shall forward all  
248 claims requesting payment for goods or services to the county auditor for the auditor's review  
249 and recommendation to the county executive.

250 (4) Each claim for goods or services against a county shall:

251 (a) itemize the claim, giving applicable names, dates, and particular goods provided or  
252 services rendered;

253 (b) if the claim is for service of process, state the character of process served, upon  
254 whom served, the number of days engaged, and the number of miles traveled;

255 (c) be duly substantiated as to its correctness and as to the fact that it is justly due;

256 (d) if the claim is for materials furnished, state to whom the materials were furnished,  
257 by whom ordered, and the quantity and price agreed upon; and

258 (e) be presented to the county executive within a year after the last item of the account  
259 or credit accrued.

260 (5) If the county executive refuses to hear or consider a claim because it is not properly  
261 made out, the county executive shall cause notice of the refusal to be given to the claimant or  
262 the claimant's agent and shall allow a reasonable amount of time for the claim to be properly  
263 itemized and substantiated.

264 (6) Nothing in this section may be construed to modify the requirements of Section  
265 ~~[63-30-11]~~ 63-30d-401.

266 Section 3. Section **17A-2-1830** is amended to read:

267 **17A-2-1830. Limitation of liability.**

268 (1) The members of the board of trustees, or any person acting in behalf of the board,  
269 while acting within the scope of their authority, are not subject to any personal liability  
270 resulting from carrying out any of the powers of this part.

271 (2) The provisions of Section ~~[63-30-36]~~ 63-30d-902 shall apply to members of the  
272 board of trustees, officers, employees, authorized volunteers, and agents of the regional service  
273 area in connection with any claims, demands, suits, actions, or proceedings that may be made

274 or brought against any of them arising out of any determination made or actions taken or  
275 omitted to be taken in compliance with any obligations under the terms of this part.

276 (3) The regional service area or any member of the board of trustees, officer, employee,  
277 authorized volunteer, or its agent is not liable to any person, for personal injury or property  
278 damage or otherwise, arising from the operation of facilities for sports competitions by any  
279 person or organization other than the regional service area. Nothing contained in this  
280 Subsection (3) shall relieve the regional service area or any person from liability or  
281 responsibility for its or their own contracts, conduct, or omissions.

282 Section 4. Section **31A-1-301** is amended to read:

283 **31A-1-301. Definitions.**

284 As used in this title, unless otherwise specified:

285 (1) (a) "Accident and health insurance" means insurance to provide protection against  
286 economic losses resulting from:

287 (i) a medical condition including:

288 (A) medical care expenses; or

289 (B) the risk of disability;

290 (ii) accident; or

291 (iii) sickness.

292 (b) "Accident and health insurance":

293 (i) includes a contract with disability contingencies including:

294 (A) an income replacement contract;

295 (B) a health care contract;

296 (C) an expense reimbursement contract;

297 (D) a credit accident and health contract;

298 (E) a continuing care contract; and

299 (F) long-term care contracts; and

300 (ii) may provide:

301 (A) hospital coverage;

302 (B) surgical coverage;

303 (C) medical coverage; or

304 (D) loss of income coverage.

305 (c) "Accident and health insurance" does not include workers' compensation insurance.

306 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title  
307 63, Chapter 46a, Utah Administrative Rulemaking Act.

308 (3) "Administrator" is defined in Subsection (149).

309 (4) "Adult" means a natural person who has attained the age of at least 18 years.

310 (5) "Affiliate" means any person who controls, is controlled by, or is under common  
311 control with, another person. A corporation is an affiliate of another corporation, regardless of  
312 ownership, if substantially the same group of natural persons manages the corporations.

313 (6) "Agency" means:

314 (a) a person other than an individual, including a sole proprietorship by which a natural  
315 person does business under an assumed name; and

316 (b) an insurance organization licensed or required to be licensed under Section  
317 31A-23a-301.

318 (7) "Alien insurer" means an insurer domiciled outside the United States.

319 (8) "Amendment" means an endorsement to an insurance policy or certificate.

320 (9) "Annuity" means an agreement to make periodical payments for a period certain or  
321 over the lifetime of one or more natural persons if the making or continuance of all or some of  
322 the series of the payments, or the amount of the payment, is dependent upon the continuance of  
323 human life.

324 (10) "Application" means a document:

325 (a) completed by an applicant to provide information about the risk to be insured; and

326 (b) that contains information that is used by the insurer to:

327 (i) evaluate risk; and

328 (ii) decide whether to:

329 (A) insure the risk under:

330 (I) the coverages as originally offered; or

331 (II) a modification of the coverage as originally offered; or

332 (B) decline to insure the risk.

333 (11) "Articles" or "articles of incorporation" means the original articles, special laws,  
334 charters, amendments, restated articles, articles of merger or consolidation, trust instruments,  
335 and other constitutive documents for trusts and other entities that are not corporations, and

336 amendments to any of these.

337 (12) "Bail bond insurance" means a guarantee that a person will attend court when  
338 required, or will obey the orders or judgment of the court, as a condition to the release of that  
339 person from confinement.

340 (13) "Binder" is defined in Section 31A-21-102.

341 (14) "Board," "board of trustees," or "board of directors" means the group of persons  
342 with responsibility over, or management of, a corporation, however designated.

343 (15) "Business entity" means a corporation, association, partnership, limited liability  
344 company, limited liability partnership, or other legal entity.

345 (16) "Business of insurance" is defined in Subsection (80).

346 (17) "Business plan" means the information required to be supplied to the  
347 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required  
348 when these subsections are applicable by reference under:

349 (a) Section 31A-7-201;

350 (b) Section 31A-8-205; or

351 (c) Subsection 31A-9-205(2).

352 (18) "Bylaws" means the rules adopted for the regulation or management of a  
353 corporation's affairs, however designated and includes comparable rules for trusts and other  
354 entities that are not corporations.

355 (19) "Captive insurance company" means:

356 (a) an insurance company:

357 (i) owned by another organization; and

358 (ii) whose exclusive purpose is to insure risks of the parent organization and affiliated  
359 companies; or

360 (b) in the case of groups and associations, an insurance organization:

361 (i) owned by the insureds; and

362 (ii) whose exclusive purpose is to insure risks of:

363 (A) member organizations;

364 (B) group members; and

365 (C) affiliates of:

366 (I) member organizations; or

- 367 (II) group members.
- 368 (20) "Casualty insurance" means liability insurance as defined in Subsection (90).
- 369 (21) "Certificate" means evidence of insurance given to:
  - 370 (a) an insured under a group insurance policy; or
  - 371 (b) a third party.
- 372 (22) "Certificate of authority" is included within the term "license."
- 373 (23) "Claim," unless the context otherwise requires, means a request or demand on an  
374 insurer for payment of benefits according to the terms of an insurance policy.
- 375 (24) "Claims-made coverage" means an insurance contract or provision limiting  
376 coverage under a policy insuring against legal liability to claims that are first made against the  
377 insured while the policy is in force.
- 378 (25) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance  
379 commissioner.
  - 380 (b) When appropriate, the terms listed in Subsection (25)(a) apply to the equivalent  
381 supervisory official of another jurisdiction.
- 382 (26) (a) "Continuing care insurance" means insurance that:
  - 383 (i) provides board and lodging;
  - 384 (ii) provides one or more of the following services:
    - 385 (A) personal services;
    - 386 (B) nursing services;
    - 387 (C) medical services; or
    - 388 (D) other health-related services; and
  - 389 (iii) provides the coverage described in Subsection (26)(a)(i) under an agreement  
390 effective:
    - 391 (A) for the life of the insured; or
    - 392 (B) for a period in excess of one year.
  - 393 (b) Insurance is continuing care insurance regardless of whether or not the board and  
394 lodging are provided at the same location as the services described in Subsection (26)(a)(ii).
- 395 (27) (a) "Control," "controlling," "controlled," or "under common control" means the  
396 direct or indirect possession of the power to direct or cause the direction of the management  
397 and policies of a person. This control may be:

- 398 (i) by contract;
- 399 (ii) by common management;
- 400 (iii) through the ownership of voting securities; or
- 401 (iv) by a means other than those described in Subsections (27)(a)(i) through (iii).
- 402 (b) There is no presumption that an individual holding an official position with another
- 403 person controls that person solely by reason of the position.
- 404 (c) A person having a contract or arrangement giving control is considered to have
- 405 control despite the illegality or invalidity of the contract or arrangement.
- 406 (d) There is a rebuttable presumption of control in a person who directly or indirectly
- 407 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
- 408 voting securities of another person.
- 409 (28) "Controlled insurer" means a licensed insurer that is either directly or indirectly
- 410 controlled by a producer.
- 411 (29) "Controlling person" means any person, firm, association, or corporation that
- 412 directly or indirectly has the power to direct or cause to be directed, the management, control,
- 413 or activities of a reinsurance intermediary.
- 414 (30) "Controlling producer" means a producer who directly or indirectly controls an
- 415 insurer.
- 416 (31) (a) "Corporation" means insurance corporation, except when referring to:
- 417 (i) a corporation doing business as an insurance producer, limited line producer,
- 418 consultant, managing general agent, reinsurance intermediary, third party administrator, or
- 419 adjuster under:
- 420 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 421 Reinsurance Intermediaries;
- 422 (B) Chapter 25, Third Party Administrators; and
- 423 (C) Chapter 26, Insurance Adjusters; or
- 424 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 425 Holding Companies.
- 426 (b) "Stock corporation" means stock insurance corporation.
- 427 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 428 (32) "Credit accident and health insurance" means insurance on a debtor to provide

429 indemnity for payments coming due on a specific loan or other credit transaction while the  
430 debtor is disabled.

431 (33) (a) "Credit insurance" means insurance offered in connection with an extension of  
432 credit that is limited to partially or wholly extinguishing that credit obligation.

433 (b) "Credit insurance" includes:

- 434 (i) credit accident and health insurance;
- 435 (ii) credit life insurance;
- 436 (iii) credit property insurance;
- 437 (iv) credit unemployment insurance;
- 438 (v) guaranteed automobile protection insurance;
- 439 (vi) involuntary unemployment insurance;
- 440 (vii) mortgage accident and health insurance;
- 441 (viii) mortgage guaranty insurance; and
- 442 (ix) mortgage life insurance.

443 (34) "Credit life insurance" means insurance on the life of a debtor in connection with  
444 an extension of credit that pays a person if the debtor dies.

445 (35) "Credit property insurance" means insurance:

- 446 (a) offered in connection with an extension of credit; and
- 447 (b) that protects the property until the debt is paid.

448 (36) "Credit unemployment insurance" means insurance:

- 449 (a) offered in connection with an extension of credit; and
- 450 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
  - 451 (i) specific loan; or
  - 452 (ii) credit transaction.

453 (37) "Creditable coverage" is as defined in 45 C.F.R. 146.113(a).

454 (38) "Creditor" means a person, including an insured, having any claim, whether:

- 455 (a) matured;
- 456 (b) unmatured;
- 457 (c) liquidated;
- 458 (d) unliquidated;
- 459 (e) secured;

460 (f) unsecured;

461 (g) absolute;

462 (h) fixed; or

463 (i) contingent.

464 (39) (a) "Customer service representative" means a person that provides insurance  
465 services and insurance product information:

466 (i) for the customer service representative's producer or consultant employer; and

467 (ii) to the customer service representative's employer's customer, client, or  
468 organization.

469 (b) A customer service representative may only operate within the scope of authority of  
470 the customer service representative's producer or consultant employer.

471 (40) "Deadline" means the final date or time:

472 (a) imposed by:

473 (i) statute;

474 (ii) rule; or

475 (iii) order; and

476 (b) by which a required filing or payment must be received by the department.

477 (41) "Deemer clause" means a provision under this title under which upon the  
478 occurrence of a condition precedent, the commissioner is deemed to have taken a specific  
479 action. If the statute so provides, the condition precedent may be the commissioner's failure to  
480 take a specific action.

481 (42) "Degree of relationship" means the number of steps between two persons  
482 determined by counting the generations separating one person from a common ancestor and  
483 then counting the generations to the other person.

484 (43) "Department" means the Insurance Department.

485 (44) "Director" means a member of the board of directors of a corporation.

486 (45) "Disability" means a physiological or psychological condition that partially or  
487 totally limits an individual's ability to:

488 (a) perform the duties of:

489 (i) that individual's occupation; or

490 (ii) any occupation for which the individual is reasonably suited by education, training,

491 or experience; or

492 (b) perform two or more of the following basic activities of daily living:

493 (i) eating;

494 (ii) toileting;

495 (iii) transferring;

496 (iv) bathing; or

497 (v) dressing.

498 (46) "Disability income insurance" is defined in Subsection (71).

499 (47) "Domestic insurer" means an insurer organized under the laws of this state.

500 (48) "Domiciliary state" means the state in which an insurer:

501 (a) is incorporated;

502 (b) is organized; or

503 (c) in the case of an alien insurer, enters into the United States.

504 (49) (a) "Eligible employee" means:

505 (i) an employee who:

506 (A) works on a full-time basis; and

507 (B) has a normal work week of 30 or more hours; or

508 (ii) a person described in Subsection (49)(b).

509 (b) "Eligible employee" includes, if the individual is included under a health benefit  
510 plan of a small employer:

511 (i) a sole proprietor;

512 (ii) a partner in a partnership; or

513 (iii) an independent contractor.

514 (c) "Eligible employee" does not include, unless eligible under Subsection (49)(b):

515 (i) an individual who works on a temporary or substitute basis for a small employer;

516 (ii) an employer's spouse; or

517 (iii) a dependent of an employer.

518 (50) "Employee" means any individual employed by an employer.

519 (51) "Employee benefits" means one or more benefits or services provided to:

520 (a) employees; or

521 (b) dependents of employees.

- 522 (52) (a) "Employee welfare fund" means a fund:  
523 (i) established or maintained, whether directly or through trustees, by:  
524 (A) one or more employers;  
525 (B) one or more labor organizations; or  
526 (C) a combination of employers and labor organizations; and  
527 (ii) that provides employee benefits paid or contracted to be paid, other than income  
528 from investments of the fund, by or on behalf of an employer doing business in this state or for  
529 the benefit of any person employed in this state.
- 530 (b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax  
531 revenues.
- 532 (53) "Endorsement" means a written agreement attached to a policy or certificate to  
533 modify one or more of the provisions of the policy or certificate.
- 534 (54) (a) "Escrow" means:  
535 (i) a real estate settlement or real estate closing conducted by a third party pursuant to  
536 the requirements of a written agreement between the parties in a real estate transaction; or  
537 (ii) a settlement or closing involving:  
538 (A) a mobile home;  
539 (B) a grazing right;  
540 (C) a water right; or  
541 (D) other personal property authorized by the commissioner.
- 542 (b) "Escrow" includes the act of conducting a:  
543 (i) real estate settlement; or  
544 (ii) real estate closing.
- 545 (55) "Excludes" is not exhaustive and does not mean that other things are not also  
546 excluded. The items listed are representative examples for use in interpretation of this title.
- 547 (56) "Expense reimbursement insurance" means insurance:  
548 (a) written to provide payments for expenses relating to hospital confinements resulting  
549 from illness or injury; and  
550 (b) written:  
551 (i) as a daily limit for a specific number of days in a hospital; and  
552 (ii) to have a one or two day waiting period following a hospitalization.

553 (57) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding  
554 positions of public or private trust.

555 (58) (a) "Filed" means that a filing is:

556 (i) submitted to the department as required by and in accordance with any applicable  
557 statute, rule, or filing order;

558 (ii) received by the department within the time period provided in the applicable  
559 statute, rule, or filing order; and

560 (iii) accompanied by the appropriate fee in accordance with:

561 (A) Section 31A-3-103; or

562 (B) rule.

563 (b) "Filed" does not include a filing that is rejected by the department because it is not  
564 submitted in accordance with Subsection (58)(a).

565 (59) "Filing," when used as a noun, means an item required to be filed with the  
566 department including:

567 (a) a policy;

568 (b) a rate;

569 (c) a form;

570 (d) a document;

571 (e) a plan;

572 (f) a manual;

573 (g) an application;

574 (h) a report;

575 (i) a certificate;

576 (j) an endorsement;

577 (k) an actuarial certification;

578 (l) a licensee annual statement;

579 (m) a licensee renewal application; or

580 (n) an advertisement.

581 (60) "First party insurance" means an insurance policy or contract in which the insurer  
582 agrees to pay claims submitted to it by the insured for the insured's losses.

583 (61) "Foreign insurer" means an insurer domiciled outside of this state, including an

584 alien insurer.

585 (62) (a) "Form" means one of the following prepared for general use:

586 (i) a policy;

587 (ii) a certificate;

588 (iii) an application; or

589 (iv) an outline of coverage.

590 (b) "Form" does not include a document specially prepared for use in an individual  
591 case.

592 (63) "Franchise insurance" means individual insurance policies provided through a  
593 mass marketing arrangement involving a defined class of persons related in some way other  
594 than through the purchase of insurance.

595 (64) "General lines of authority" include:

596 (a) the general lines of insurance in Subsection (65);

597 (b) title insurance under one of the following sublines of authority:

598 (i) search, including authority to act as a title marketing representative;

599 (ii) escrow, including authority to act as a title marketing representative;

600 (iii) search and escrow, including authority to act as a title marketing representative;

601 and

602 (iv) title marketing representative only;

603 (c) surplus lines;

604 (d) workers' compensation; and

605 (e) any other line of insurance that the commissioner considers necessary to recognize  
606 in the public interest.

607 (65) "General lines of insurance" include:

608 (a) accident and health;

609 (b) casualty;

610 (c) life;

611 (d) personal lines;

612 (e) property; and

613 (f) variable contracts, including variable life and annuity.

614 (66) "Group health plan" means an employee welfare benefit plan to the extent that the

615 plan provides medical care:

616 (a) (i) to employees; or

617 (ii) to a dependent of an employee; and

618 (b) (i) directly;

619 (ii) through insurance reimbursement; or

620 (iii) through any other method.

621 (67) "Guaranteed automobile protection insurance" means insurance offered in

622 connection with an extension of credit that pays the difference in amount between the

623 insurance settlement and the balance of the loan if the insured automobile is a total loss.

624 (68) "Health benefit plan" means a policy or certificate for health care insurance,

625 except that health benefit plan does not include coverage:

626 (a) solely for:

627 (i) accident;

628 (ii) dental;

629 (iii) vision;

630 (iv) Medicare supplement;

631 (v) long-term care; or

632 (vi) income replacement; or

633 (b) that is:

634 (i) offered and marketed as supplemental health insurance;

635 (ii) not offered or marketed as a substitute for:

636 (A) hospital or medical expense insurance; or

637 (B) major medical expense insurance; and

638 (iii) solely for:

639 (A) a specified disease;

640 (B) hospital confinement indemnity; or

641 (C) limited benefit plan.

642 (69) "Health care" means any of the following intended for use in the diagnosis,

643 treatment, mitigation, or prevention of a human ailment or impairment:

644 (a) professional services;

645 (b) personal services;

- 646 (c) facilities;
- 647 (d) equipment;
- 648 (e) devices;
- 649 (f) supplies; or
- 650 (g) medicine.
- 651 (70) (a) "Health care insurance" or "health insurance" means insurance providing:
- 652 (i) health care benefits; or
- 653 (ii) payment of incurred health care expenses.
- 654 (b) "Health care insurance" or "health insurance" does not include accident and health
- 655 insurance providing benefits for:
- 656 (i) replacement of income;
- 657 (ii) short-term accident;
- 658 (iii) fixed indemnity;
- 659 (iv) credit accident and health;
- 660 (v) supplements to liability;
- 661 (vi) workers' compensation;
- 662 (vii) automobile medical payment;
- 663 (viii) no-fault automobile;
- 664 (ix) equivalent self-insurance; or
- 665 (x) any type of accident and health insurance coverage that is a part of or attached to
- 666 another type of policy.
- 667 (71) "Income replacement insurance" or "disability income insurance" means insurance
- 668 written to provide payments to replace income lost from accident or sickness.
- 669 (72) "Indemnity" means the payment of an amount to offset all or part of an insured
- 670 loss.
- 671 (73) "Independent adjuster" means an insurance adjuster required to be licensed under
- 672 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.
- 673 (74) "Independently procured insurance" means insurance procured under Section
- 674 31A-15-104.
- 675 (75) "Individual" means a natural person.
- 676 (76) "Inland marine insurance" includes insurance covering:

- 677 (a) property in transit on or over land;
- 678 (b) property in transit over water by means other than boat or ship;
- 679 (c) bailee liability;
- 680 (d) fixed transportation property such as bridges, electric transmission systems, radio
- 681 and television transmission towers and tunnels; and
- 682 (e) personal and commercial property floaters.

683 (77) "Insolvency" means that:

- 684 (a) an insurer is unable to pay its debts or meet its obligations as they mature;
- 685 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
- 686 RBC under Subsection 31A-17-601(8)(c); or
- 687 (c) an insurer is determined to be hazardous under this title.

688 (78) (a) "Insurance" means:

689 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more

690 persons to one or more other persons; or

691 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a

692 group of persons that includes the person seeking to distribute that person's risk.

693 (b) "Insurance" includes:

694 (i) risk distributing arrangements providing for compensation or replacement for

695 damages or loss through the provision of services or benefits in kind;

696 (ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a

697 business and not as merely incidental to a business transaction; and

698 (iii) plans in which the risk does not rest upon the person who makes the arrangements,

699 but with a class of persons who have agreed to share it.

700 (79) "Insurance adjuster" means a person who directs the investigation, negotiation, or

701 settlement of a claim under an insurance policy other than life insurance or an annuity, on

702 behalf of an insurer, policyholder, or a claimant under an insurance policy.

703 (80) "Insurance business" or "business of insurance" includes:

704 (a) providing health care insurance, as defined in Subsection (70), by organizations that

705 are or should be licensed under this title;

706 (b) providing benefits to employees in the event of contingencies not within the control

707 of the employees, in which the employees are entitled to the benefits as a right, which benefits

708 may be provided either:

709 (i) by single employers or by multiple employer groups; or

710 (ii) through trusts, associations, or other entities;

711 (c) providing annuities, including those issued in return for gifts, except those provided

712 by persons specified in Subsections 31A-22-1305(2) and (3);

713 (d) providing the characteristic services of motor clubs as outlined in Subsection (106);

714 (e) providing other persons with insurance as defined in Subsection (78);

715 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,

716 or surety, any contract or policy of title insurance;

717 (g) transacting or proposing to transact any phase of title insurance, including

718 solicitation, negotiation preliminary to execution, execution of a contract of title insurance,

719 insuring, and transacting matters subsequent to the execution of the contract and arising out of

720 it, including reinsurance; and

721 (h) doing, or proposing to do, any business in substance equivalent to Subsections

722 (80)(a) through (g) in a manner designed to evade the provisions of this title.

723 (81) "Insurance consultant" or "consultant" means a person who:

724 (a) advises other persons about insurance needs and coverages;

725 (b) is compensated by the person advised on a basis not directly related to the insurance

726 placed; and

727 (c) except as provided in Section 31A-23a-501, is not compensated directly or

728 indirectly by an insurer or producer for advice given.

729 (82) "Insurance holding company system" means a group of two or more affiliated

730 persons, at least one of whom is an insurer.

731 (83) (a) "Insurance producer" or "producer" means a person licensed or required to be

732 licensed under the laws of this state to sell, solicit, or negotiate insurance.

733 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an

734 insurance customer or an insured:

735 (i) "producer for the insurer" means a producer who is compensated directly or

736 indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer; and

737 (ii) "producer for the insured" means a producer who:

738 (A) is compensated directly and only by an insurance customer or an insured; and

739 (B) receives no compensation directly or indirectly from an insurer for selling,  
740 soliciting, or negotiating any product of that insurer to an insurance customer or insured.

741 (84) (a) "Insured" means a person to whom or for whose benefit an insurer makes a  
742 promise in an insurance policy and includes:

743 (i) policyholders;

744 (ii) subscribers;

745 (iii) members; and

746 (iv) beneficiaries.

747 (b) The definition in Subsection (84)(a):

748 (i) applies only to this title; and

749 (ii) does not define the meaning of this word as used in insurance policies or  
750 certificates.

751 (85) (a) (i) "Insurer" means any person doing an insurance business as a principal  
752 including:

753 (A) fraternal benefit societies;

754 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2)  
755 and (3);

756 (C) motor clubs;

757 (D) employee welfare plans; and

758 (E) any person purporting or intending to do an insurance business as a principal on  
759 that person's own account.

760 (ii) "Insurer" does not include a governmental entity~~[, as defined in Section 63-30-2,]~~  
761 to the extent it is engaged in the activities described in Section 31A-12-107.

762 (b) "Admitted insurer" is defined in Subsection (153)(b).

763 (c) "Alien insurer" is defined in Subsection (7).

764 (d) "Authorized insurer" is defined in Subsection (153)(b).

765 (e) "Domestic insurer" is defined in Subsection (47).

766 (f) "Foreign insurer" is defined in Subsection (61).

767 (g) "Nonadmitted insurer" is defined in Subsection (153)(a).

768 (h) "Unauthorized insurer" is defined in Subsection (153)(a).

769 (86) "Interinsurance exchange" is defined in Subsection (135).

- 770 (87) "Involuntary unemployment insurance" means insurance:  
771 (a) offered in connection with an extension of credit;  
772 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
773 coming due on a:  
774 (i) specific loan; or  
775 (ii) credit transaction.
- 776 (88) "Large employer," in connection with a health benefit plan, means an employer  
777 who, with respect to a calendar year and to a plan year:  
778 (a) employed an average of at least 51 eligible employees on each business day during  
779 the preceding calendar year; and  
780 (b) employs at least two employees on the first day of the plan year.
- 781 (89) (a) Except for a retainer contract or legal assistance described in Section  
782 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for  
783 specified legal expenses.  
784 (b) "Legal expense insurance" includes arrangements that create reasonable  
785 expectations of enforceable rights.  
786 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
787 legal services incidental to other insurance coverages.
- 788 (90) (a) "Liability insurance" means insurance against liability:  
789 (i) for death, injury, or disability of any human being, or for damage to property,  
790 exclusive of the coverages under:  
791 (A) Subsection (100) for medical malpractice insurance;  
792 (B) Subsection (127) for professional liability insurance; and  
793 (C) Subsection (157) for workers' compensation insurance;  
794 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the  
795 insured who are injured, irrespective of legal liability of the insured, when issued with or  
796 supplemental to insurance against legal liability for the death, injury, or disability of human  
797 beings, exclusive of the coverages under:  
798 (A) Subsection (100) for medical malpractice insurance;  
799 (B) Subsection (127) for professional liability insurance; and  
800 (C) Subsection (157) for workers' compensation insurance;

801 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,  
802 pipes, pressure containers, machinery, or apparatus;

803 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,  
804 water pipes and containers, or by water entering through leaks or openings in buildings; or

805 (v) for other loss or damage properly the subject of insurance not within any other kind  
806 or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or  
807 public policy.

808 (b) "Liability insurance" includes:

809 (i) vehicle liability insurance as defined in Subsection (155);

810 (ii) residential dwelling liability insurance as defined in Subsection (138); and

811 (iii) making inspection of, and issuing certificates of inspection upon, elevators,  
812 boilers, machinery, and apparatus of any kind when done in connection with insurance on  
813 them.

814 (91) (a) "License" means the authorization issued by the commissioner to engage in  
815 some activity that is part of or related to the insurance business.

816 (b) "License" includes certificates of authority issued to insurers.

817 (92) (a) "Life insurance" means insurance on human lives and insurances pertaining to  
818 or connected with human life.

819 (b) The business of life insurance includes:

820 (i) granting death benefits;

821 (ii) granting annuity benefits;

822 (iii) granting endowment benefits;

823 (iv) granting additional benefits in the event of death by accident;

824 (v) granting additional benefits to safeguard the policy against lapse in the event of  
825 disability; and

826 (vi) providing optional methods of settlement of proceeds.

827 (93) "Limited license" means a license that:

828 (a) is issued for a specific product of insurance; and

829 (b) limits an individual or agency to transact only for that product or insurance.

830 (94) "Limited line credit insurance" includes the following forms of insurance:

831 (a) credit life;

- 832 (b) credit accident and health;
- 833 (c) credit property;
- 834 (d) credit unemployment;
- 835 (e) involuntary unemployment;
- 836 (f) mortgage life;
- 837 (g) mortgage guaranty;
- 838 (h) mortgage accident and health;
- 839 (i) guaranteed automobile protection; and
- 840 (j) any other form of insurance offered in connection with an extension of credit that:
- 841 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 842 (ii) the commissioner determines by rule should be designated as a form of limited line
- 843 credit insurance.

844 (95) "Limited line credit insurance producer" means a person who sells, solicits, or

845 negotiates one or more forms of limited line credit insurance coverage to individuals through a

846 master, corporate, group, or individual policy.

847 (96) "Limited line insurance" includes:

- 848 (a) bail bond;
- 849 (b) limited line credit insurance;
- 850 (c) legal expense insurance;
- 851 (d) motor club insurance;
- 852 (e) rental car-related insurance;
- 853 (f) travel insurance; and
- 854 (g) any other form of limited insurance that the commissioner determines by rule
- 855 should be designated a form of limited line insurance.

856 (97) "Limited lines authority" includes:

- 857 (a) the lines of insurance listed in Subsection (96); and
- 858 (b) a customer service representative.

859 (98) "Limited lines producer" means a person who sells, solicits, or negotiates limited

860 lines insurance.

861 (99) (a) "Long-term care insurance" means an insurance policy or rider advertised,

862 marketed, offered, or designated to provide coverage:

- 863 (i) in a setting other than an acute care unit of a hospital;
- 864 (ii) for not less than 12 consecutive months for each covered person on the basis of:
  - 865 (A) expenses incurred;
  - 866 (B) indemnity;
  - 867 (C) prepayment; or
  - 868 (D) another method;
- 869 (iii) for one or more necessary or medically necessary services that are:
  - 870 (A) diagnostic;
  - 871 (B) preventative;
  - 872 (C) therapeutic;
  - 873 (D) rehabilitative;
  - 874 (E) maintenance; or
  - 875 (F) personal care; and
- 876 (iv) that may be issued by:
  - 877 (A) an insurer;
  - 878 (B) a fraternal benefit society;
  - 879 (C) (I) a nonprofit health hospital; and
  - 880 (II) a medical service corporation;
  - 881 (D) a prepaid health plan;
  - 882 (E) a health maintenance organization; or
  - 883 (F) an entity similar to the entities described in Subsections (99)(a)(iv)(A) through (E)
- 884 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 885 (b) "Long-term care insurance" includes:
  - 886 (i) any of the following that provide directly or supplement long-term care insurance:
    - 887 (A) a group or individual annuity or rider; or
    - 888 (B) a life insurance policy or rider;
  - 889 (ii) a policy or rider that provides for payment of benefits based on:
    - 890 (A) cognitive impairment; or
    - 891 (B) functional capacity; or
  - 892 (iii) a qualified long-term care insurance contract.
- 893 (c) "Long-term care insurance" does not include:

- 894 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 895 (ii) basic hospital expense coverage;
- 896 (iii) basic medical/surgical expense coverage;
- 897 (iv) hospital confinement indemnity coverage;
- 898 (v) major medical expense coverage;
- 899 (vi) income replacement or related asset-protection coverage;
- 900 (vii) accident only coverage;
- 901 (viii) coverage for a specified:
  - 902 (A) disease; or
  - 903 (B) accident;
- 904 (ix) limited benefit health coverage; or
- 905 (x) a life insurance policy that accelerates the death benefit to provide the option of a  
906 lump sum payment:
  - 907 (A) if the following are not conditioned on the receipt of long-term care:
    - 908 (I) benefits; or
    - 909 (II) eligibility; and
    - 910 (B) the coverage is for one or more the following qualifying events:
      - 911 (I) terminal illness;
      - 912 (II) medical conditions requiring extraordinary medical intervention; or
      - 913 (III) permanent institutional confinement.
  - 914 (100) "Medical malpractice insurance" means insurance against legal liability incident  
915 to the practice and provision of medical services other than the practice and provision of dental  
916 services.
  - 917 (101) "Member" means a person having membership rights in an insurance  
918 corporation.
  - 919 (102) "Minimum capital" or "minimum required capital" means the capital that must be  
920 constantly maintained by a stock insurance corporation as required by statute.
  - 921 (103) "Mortgage accident and health insurance" means insurance offered in connection  
922 with an extension of credit that provides indemnity for payments coming due on a mortgage  
923 while the debtor is disabled.
  - 924 (104) "Mortgage guaranty insurance" means surety insurance under which mortgagees

925 and other creditors are indemnified against losses caused by the default of debtors.

926 (105) "Mortgage life insurance" means insurance on the life of a debtor in connection  
927 with an extension of credit that pays if the debtor dies.

928 (106) "Motor club" means a person:

929 (a) licensed under:

930 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

931 (ii) Chapter 11, Motor Clubs; or

932 (iii) Chapter 14, Foreign Insurers; and

933 (b) that promises for an advance consideration to provide for a stated period of time:

934 (i) legal services under Subsection 31A-11-102(1)(b);

935 (ii) bail services under Subsection 31A-11-102(1)(c); or

936 (iii) trip reimbursement, towing services, emergency road services, stolen automobile  
937 services, a combination of these services, or any other services given in Subsections  
938 31A-11-102(1)(b) through (f).

939 (107) "Mutual" means mutual insurance corporation.

940 (108) "Network plan" means health care insurance:

941 (a) that is issued by an insurer; and

942 (b) under which the financing and delivery of medical care is provided, in whole or in  
943 part, through a defined set of providers under contract with the insurer, including the financing  
944 and delivery of items paid for as medical care.

945 (109) "Nonparticipating" means a plan of insurance under which the insured is not  
946 entitled to receive dividends representing shares of the surplus of the insurer.

947 (110) "Ocean marine insurance" means insurance against loss of or damage to:

948 (a) ships or hulls of ships;

949 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,  
950 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia  
951 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

952 (c) earnings such as freight, passage money, commissions, or profits derived from  
953 transporting goods or people upon or across the oceans or inland waterways; or

954 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
955 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons

956 in connection with maritime activity.

957 (111) "Order" means an order of the commissioner.

958 (112) "Outline of coverage" means a summary that explains an accident and health  
959 insurance policy.

960 (113) "Participating" means a plan of insurance under which the insured is entitled to  
961 receive dividends representing shares of the surplus of the insurer.

962 (114) "Participation," as used in a health benefit plan, means a requirement relating to  
963 the minimum percentage of eligible employees that must be enrolled in relation to the total  
964 number of eligible employees of an employer reduced by each eligible employee who  
965 voluntarily declines coverage under the plan because the employee has other health care  
966 insurance coverage.

967 (115) "Person" includes an individual, partnership, corporation, incorporated or  
968 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar  
969 entity or combination of entities acting in concert.

970 (116) "Personal lines insurance" means property and casualty insurance coverage sold  
971 for primarily noncommercial purposes to:

- 972 (a) individuals; and
- 973 (b) families.

974 (117) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

975 (118) "Plan year" means:

976 (a) the year that is designated as the plan year in:

- 977 (i) the plan document of a group health plan; or
- 978 (ii) a summary plan description of a group health plan;

979 (b) if the plan document or summary plan description does not designate a plan year or  
980 there is no plan document or summary plan description:

- 981 (i) the year used to determine deductibles or limits;
- 982 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

983 or

984 (iii) the employer's taxable year if:

985 (A) the plan does not impose deductibles or limits on a yearly basis; and

986 (B) (I) the plan is not insured; or

- 987 (II) the insurance policy is not renewed on an annual basis; or  
988 (c) in a case not described in Subsection (118)(a) or (b), the calendar year.  
989 (119) (a) (i) "Policy" means any document, including attached endorsements and riders,  
990 purporting to be an enforceable contract, which memorializes in writing some or all of the  
991 terms of an insurance contract.
- 992 (ii) "Policy" includes a service contract issued by:  
993 (A) a motor club under Chapter 11, Motor Clubs;  
994 (B) a service contract provided under Chapter 6a, Service Contracts; and  
995 (C) a corporation licensed under:  
996 (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or  
997 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.  
998 (iii) "Policy" does not include:  
999 (A) a certificate under a group insurance contract; or  
1000 (B) a document that does not purport to have legal effect.
- 1001 (b) (i) "Group insurance policy" means a policy covering a group of persons that is  
1002 issued to a policyholder on behalf of the group, for the benefit of group members who are  
1003 selected under procedures defined in the policy or in agreements which are collateral to the  
1004 policy.
- 1005 (ii) A group insurance policy may include members of the policyholder's family or  
1006 dependents.
- 1007 (c) "Blanket insurance policy" means a group policy covering classes of persons  
1008 without individual underwriting, where the persons insured are determined by definition of the  
1009 class with or without designating the persons covered.
- 1010 (120) "Policyholder" means the person who controls a policy, binder, or oral contract  
1011 by ownership, premium payment, or otherwise.
- 1012 (121) "Policy illustration" means a presentation or depiction that includes  
1013 nonguaranteed elements of a policy of life insurance over a period of years.
- 1014 (122) "Policy summary" means a synopsis describing the elements of a life insurance  
1015 policy.
- 1016 (123) "Preexisting condition," in connection with a health benefit plan, means:  
1017 (a) a condition for which medical advice, diagnosis, care, or treatment was

1018 recommended or received during the six months immediately preceding the earlier of:

1019 (i) the enrollment date; or

1020 (ii) the effective date of coverage; or

1021 (b) for an individual insurance policy, a pregnancy existing on the effective date of  
1022 coverage.

1023 (124) (a) "Premium" means the monetary consideration for an insurance policy, and  
1024 includes assessments, membership fees, required contributions, or monetary consideration,  
1025 however designated.

1026 (b) Consideration paid to third party administrators for their services is not "premium,"  
1027 though amounts paid by third party administrators to insurers for insurance on the risks  
1028 administered by the third party administrators are "premium."

1029 (125) "Principal officers" of a corporation means the officers designated under  
1030 Subsection 31A-5-203(3).

1031 (126) "Proceedings" includes actions and special statutory proceedings.

1032 (127) "Professional liability insurance" means insurance against legal liability incident  
1033 to the practice of a profession and provision of any professional services.

1034 (128) "Property insurance" means insurance against loss or damage to real or personal  
1035 property of every kind and any interest in that property, from all hazards or causes, and against  
1036 loss consequential upon the loss or damage including vehicle comprehensive and vehicle  
1037 physical damage coverages, but excluding inland marine insurance and ocean marine insurance  
1038 as defined under Subsections (76) and (110).

1039 (129) "Qualified long-term care insurance contract" or "federally tax qualified  
1040 long-term care insurance contract" means:

1041 (a) an individual or group insurance contract that meets the requirements of Section  
1042 7702B(b), Internal Revenue Code; or

1043 (b) the portion of a life insurance contract that provides long-term care insurance:

1044 (i) (A) by rider; or

1045 (B) as a part of the contract; and

1046 (ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.

1047 (130) "Qualified United States financial institution" means an institution that:

1048 (a) is:

- 1049 (i) organized under the laws of the United States or any state; or  
1050 (ii) in the case of a United States office of a foreign banking organization, licensed  
1051 under the laws of the United States or any state;
- 1052 (b) is regulated, supervised, and examined by United States federal or state authorities  
1053 having regulatory authority over banks and trust companies; and
- 1054 (c) meets the standards of financial condition and standing that are considered  
1055 necessary and appropriate to regulate the quality of financial institutions whose letters of credit  
1056 will be acceptable to the commissioner as determined by:
- 1057 (i) the commissioner by rule; or  
1058 (ii) the Securities Valuation Office of the National Association of Insurance  
1059 Commissioners.
- 1060 (131) (a) "Rate" means:
- 1061 (i) the cost of a given unit of insurance; or  
1062 (ii) for property-casualty insurance, that cost of insurance per exposure unit either  
1063 expressed as:
- 1064 (A) a single number; or  
1065 (B) a pure premium rate, adjusted before any application of individual risk variations  
1066 based on loss or expense considerations to account for the treatment of:
- 1067 (I) expenses;  
1068 (II) profit; and  
1069 (III) individual insurer variation in loss experience.
- 1070 (b) "Rate" does not include a minimum premium.
- 1071 (132) (a) Except as provided in Subsection (132)(b), "rate service organization" means  
1072 any person who assists insurers in rate making or filing by:
- 1073 (i) collecting, compiling, and furnishing loss or expense statistics;  
1074 (ii) recommending, making, or filing rates or supplementary rate information; or  
1075 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1076 (b) "Rate service organization" does not mean:
- 1077 (i) an employee of an insurer;  
1078 (ii) a single insurer or group of insurers under common control;  
1079 (iii) a joint underwriting group; or

1080 (iv) a natural person serving as an actuarial or legal consultant.

1081 (133) "Rating manual" means any of the following used to determine initial and  
1082 renewal policy premiums:

1083 (a) a manual of rates;

1084 (b) classifications;

1085 (c) rate-related underwriting rules; and

1086 (d) rating formulas that describe steps, policies, and procedures for determining initial  
1087 and renewal policy premiums.

1088 (134) "Received by the department" means:

1089 (a) except as provided in Subsection (134)(b), the date delivered to and stamped  
1090 received by the department, whether delivered:

1091 (i) in person; or

1092 (ii) electronically; and

1093 (b) if delivered to the department by a delivery service, the delivery service's postmark  
1094 date or pick-up date unless otherwise stated in:

1095 (i) statute;

1096 (ii) rule; or

1097 (iii) a specific filing order.

1098 (135) "Reciprocal" or "interinsurance exchange" means any unincorporated association  
1099 of persons:

1100 (a) operating through an attorney-in-fact common to all of them; and

1101 (b) exchanging insurance contracts with one another that provide insurance coverage  
1102 on each other.

1103 (136) "Reinsurance" means an insurance transaction where an insurer, for  
1104 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
1105 reinsurance transactions, this title sometimes refers to:

1106 (a) the insurer transferring the risk as the "ceding insurer"; and

1107 (b) the insurer assuming the risk as the:

1108 (i) "assuming insurer"; or

1109 (ii) "assuming reinsurer."

1110 (137) "Reinsurer" means any person, firm, association, or corporation licensed in this

1111 state as an insurer with the authority to assume reinsurance.

1112 (138) "Residential dwelling liability insurance" means insurance against liability  
1113 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is  
1114 a detached single family residence or multifamily residence up to four units.

1115 (139) "Retrocession" means reinsurance with another insurer of a liability assumed  
1116 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer  
1117 part of a liability assumed under a reinsurance contract.

1118 (140) "Rider" means an endorsement to:

1119 (a) an insurance policy; or

1120 (b) an insurance certificate.

1121 (141) (a) "Security" means any:

1122 (i) note;

1123 (ii) stock;

1124 (iii) bond;

1125 (iv) debenture;

1126 (v) evidence of indebtedness;

1127 (vi) certificate of interest or participation in any profit-sharing agreement;

1128 (vii) collateral-trust certificate;

1129 (viii) preorganization certificate or subscription;

1130 (ix) transferable share;

1131 (x) investment contract;

1132 (xi) voting trust certificate;

1133 (xii) certificate of deposit for a security;

1134 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in  
1135 payments out of production under such a title or lease;

1136 (xiv) commodity contract or commodity option;

1137 (xv) any certificate of interest or participation in, temporary or interim certificate for,  
1138 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed  
1139 in Subsections (141)(a)(i) through (xiv); or

1140 (xvi) any other interest or instrument commonly known as a security.

1141 (b) "Security" does not include:

1142 (i) any insurance or endowment policy or annuity contract under which an insurance  
1143 company promises to pay money in a specific lump sum or periodically for life or some other  
1144 specified period; or

1145 (ii) a burial certificate or burial contract.

1146 (142) "Self-insurance" means any arrangement under which a person provides for  
1147 spreading its own risks by a systematic plan.

1148 (a) Except as provided in this Subsection (142), self-insurance does not include an  
1149 arrangement under which a number of persons spread their risks among themselves.

1150 (b) Self-insurance does include an arrangement by which a governmental entity[~~as~~  
1151 ~~defined in Section 63-30-2,~~] undertakes to indemnify its employees for liability arising out of  
1152 the employees' employment.

1153 (c) Self-insurance does include an arrangement by which a person with a managed  
1154 program of self-insurance and risk management undertakes to indemnify its affiliates,  
1155 subsidiaries, directors, officers, or employees for liability or risk which is related to the  
1156 relationship or employment.

1157 (d) Self-insurance does not include any arrangement with independent contractors.

1158 (143) "Sell" means to exchange a contract of insurance:

1159 (a) by any means;

1160 (b) for money or its equivalent; and

1161 (c) on behalf of an insurance company.

1162 (144) "Short-term care insurance" means any insurance policy or rider advertised,  
1163 marketed, offered, or designed to provide coverage that is similar to long-term care insurance  
1164 but that provides coverage for less than 12 consecutive months for each covered person.

1165 (145) "Small employer," in connection with a health benefit plan, means an employer  
1166 who, with respect to a calendar year and to a plan year:

1167 (a) employed an average of at least two employees but not more than 50 eligible  
1168 employees on each business day during the preceding calendar year; and

1169 (b) employs at least two employees on the first day of the plan year.

1170 (146) (a) "Subsidiary" of a person means an affiliate controlled by that person either  
1171 directly or indirectly through one or more affiliates or intermediaries.

1172 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting

1173 shares are owned by that person either alone or with its affiliates, except for the minimum  
1174 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1175 others.

1176 (147) Subject to Subsection (78)(b), "surety insurance" includes:

1177 (a) a guarantee against loss or damage resulting from failure of principals to pay or  
1178 perform their obligations to a creditor or other obligee;

1179 (b) bail bond insurance; and

1180 (c) fidelity insurance.

1181 (148) (a) "Surplus" means the excess of assets over the sum of paid-in capital and  
1182 liabilities.

1183 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been  
1184 designated by the insurer as permanent.

1185 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require  
1186 that mutuals doing business in this state maintain specified minimum levels of permanent  
1187 surplus.

1188 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is  
1189 essentially the same as the minimum required capital requirement that applies to stock insurers.

1190 (c) "Excess surplus" means:

1191 (i) for life or accident and health insurers, health organizations, and property and  
1192 casualty insurers as defined in Section 31A-17-601, the lesser of:

1193 (A) that amount of an insurer's or health organization's total adjusted capital, as defined  
1194 in Subsection (151), that exceeds the product of:

1195 (I) 2.5; and

1196 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1197 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1198 (B) that amount of an insurer's or health organization's total adjusted capital, as defined  
1199 in Subsection (151), that exceeds the product of:

1200 (I) 3.0; and

1201 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1202 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title  
1203 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1204 (A) 1.5; and  
1205 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).  
1206 (149) "Third party administrator" or "administrator" means any person who collects  
1207 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of  
1208 the state in connection with insurance coverage, annuities, or service insurance coverage,  
1209 except:  
1210 (a) a union on behalf of its members;  
1211 (b) a person administering any:  
1212 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1213 1974;  
1214 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or  
1215 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;  
1216 (c) an employer on behalf of the employer's employees or the employees of one or  
1217 more of the subsidiary or affiliated corporations of the employer;  
1218 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance  
1219 for which the insurer holds a license in this state; or  
1220 (e) a person licensed or exempt from licensing under Chapter 23a, Insurance Marketing  
1221 - Licensing Producers, Consultants, and Reinsurance Intermediaries, or Chapter 26, Insurance  
1222 Adjusters, whose activities are limited to those authorized under the license the person holds or  
1223 for which the person is exempt.  
1224 (150) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of  
1225 real or personal property or the holders of liens or encumbrances on that property, or others  
1226 interested in the property against loss or damage suffered by reason of liens or encumbrances  
1227 upon, defects in, or the unmarketability of the title to the property, or invalidity or  
1228 unenforceability of any liens or encumbrances on the property.  
1229 (151) "Total adjusted capital" means the sum of an insurer's or health organization's  
1230 statutory capital and surplus as determined in accordance with:  
1231 (a) the statutory accounting applicable to the annual financial statements required to be  
1232 filed under Section 31A-4-113; and  
1233 (b) any other items provided by the RBC instructions, as RBC instructions is defined in  
1234 Section 31A-17-601.

1235 (152) (a) "Trustee" means "director" when referring to the board of directors of a  
1236 corporation.

1237 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1238 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1239 individually or jointly and whether designated by that name or any other, that is charged with  
1240 or has the overall management of an employee welfare fund.

1241 (153) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"  
1242 means an insurer:

1243 (i) not holding a valid certificate of authority to do an insurance business in this state;  
1244 or

1245 (ii) transacting business not authorized by a valid certificate.

1246 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1247 (i) holding a valid certificate of authority to do an insurance business in this state; and

1248 (ii) transacting business as authorized by a valid certificate.

1249 (154) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1250 (155) "Vehicle liability insurance" means insurance against liability resulting from or  
1251 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle  
1252 comprehensive and vehicle physical damage coverages under Subsection (128).

1253 (156) "Voting security" means a security with voting rights, and includes any security  
1254 convertible into a security with a voting right associated with it.

1255 (157) "Workers' compensation insurance" means:

1256 (a) insurance for indemnification of employers against liability for compensation based  
1257 on:

1258 (i) compensable accidental injuries; and

1259 (ii) occupational disease disability;

1260 (b) employer's liability insurance incidental to workers' compensation insurance and  
1261 written in connection with it; and

1262 (c) insurance assuring to the persons entitled to workers' compensation benefits the  
1263 compensation provided by law.

1264 Section 5. Section **31A-2-306** is amended to read:

1265 **31A-2-306. Judicial review -- Costs.**

1266 (1) A person aggrieved by a rule or order of the commissioner, or aggrieved by the  
1267 commissioner's failure to act when he has a duty to act, may obtain judicial review.

1268 (2) The court reviewing agency actions governed by this title shall give priority to  
1269 those actions and shall hear and determine them promptly.

1270 (3) Costs shall be awarded as in civil cases. If the court finds that the appeal from  
1271 action or inaction stemmed from the bad faith or malice of the commissioner, the court may  
1272 award reasonable attorney's fees to the prevailing petitioner. Section [~~63-30-23~~] 63-30d-701  
1273 applies to the extent the attorney's fees awarded under this subsection exceed \$10,000 for any  
1274 one appeal.

1275 Section 6. Section **31A-12-107** is amended to read:

1276 **31A-12-107. Governmental immunity.**

1277 Notwithstanding any other provision of this title, a governmental entity[~~, as defined in~~  
1278 ~~Section 63-30-2,~~] is not an insurer for purposes of this title and is not engaged in the business  
1279 of insurance to the extent that it is:

1280 (1) covering its own liabilities under Title 63, Chapter [~~30~~] 30d, Governmental  
1281 Immunity Act of Utah; or

1282 (2) engaging in other related risk management activities related to the normal course of  
1283 its activities.

1284 Section 7. Section **31A-22-305** is amended to read:

1285 **31A-22-305. Uninsured and underinsured motorist coverage.**

1286 (1) As used in this section, "covered persons" includes:

1287 (a) the named insured;

1288 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,  
1289 who are residents of the named insured's household, including those who usually make their

1290 home in the same household but temporarily live elsewhere;

1291 (c) any person occupying or using a motor vehicle:

1292 (i) referred to in the policy; or

1293 (ii) owned by a self-insurer; and

1294 (d) any person who is entitled to recover damages against the owner or operator of the  
1295 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under  
1296 Subsection (1)(a), (b), or (c).

1297 (2) As used in this section, "uninsured motor vehicle" includes:  
1298 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered  
1299 under a liability policy at the time of an injury-causing occurrence; or  
1300 (ii) (A) a motor vehicle covered with lower liability limits than required by Section  
1301 31A-22-304; and  
1302 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of  
1303 the deficiency;  
1304 (b) an unidentified motor vehicle that left the scene of an accident proximately caused  
1305 by the motor vehicle operator;  
1306 (c) a motor vehicle covered by a liability policy, but coverage for an accident is  
1307 disputed by the liability insurer for more than 60 days or continues to be disputed for more than  
1308 60 days; or  
1309 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of  
1310 the motor vehicle is declared insolvent by a court of competent jurisdiction; and  
1311 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent  
1312 that the claim against the insolvent insurer is not paid by a guaranty association or fund.  
1313 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides  
1314 coverage for covered persons who are legally entitled to recover damages from owners or  
1315 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.  
1316 (b) For new policies written on or after January 1, 2001, the limits of uninsured  
1317 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle  
1318 liability coverage or the maximum uninsured motorist coverage limits available by the insurer  
1319 under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser  
1320 amount by signing an acknowledgment form provided by the insurer that:  
1321 (i) waives the higher coverage;  
1322 (ii) reasonably explains the purpose of uninsured motorist coverage; and  
1323 (iii) discloses the additional premiums required to purchase uninsured motorist  
1324 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability  
1325 coverage or the maximum uninsured motorist coverage limits available by the insurer under the  
1326 insured's motor vehicle policy.  
1327 (c) Self-insurers, including governmental entities, may elect to provide uninsured

1328 motorist coverage in an amount that is less than their maximum self-insured retention under  
1329 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from  
1330 the chief financial officer or chief risk officer that declares the:

1331 (i) self-insured entity's coverage level; and

1332 (ii) process for filing an uninsured motorist claim.

1333 (d) Uninsured motorist coverage may not be sold with limits that are less than the  
1334 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

1335 (e) The acknowledgment under Subsection (3)(b) continues for that issuer of the  
1336 uninsured motorist coverage until the insured, in writing, requests different uninsured motorist  
1337 coverage from the insurer.

1338 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
1339 policies existing on that date, the insurer shall disclose in the same medium as the premium  
1340 renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs  
1341 associated with increasing the coverage in amounts up to and including the maximum amount  
1342 available by the insurer under the insured's motor vehicle policy.

1343 (ii) The disclosure shall be sent to all insureds that carry uninsured motorist coverage  
1344 limits in an amount less than the insured's motor vehicle liability policy limits or the maximum  
1345 uninsured motorist coverage limits available by the insurer under the insured's motor vehicle  
1346 policy.

1347 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject  
1348 uninsured motorist coverage by an express writing to the insurer that provides liability  
1349 coverage under Subsection 31A-22-302(1)(a).

1350 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable  
1351 explanation of the purpose of uninsured motorist coverage.

1352 (iii) This rejection continues for that issuer of the liability coverage until the insured in  
1353 writing requests uninsured motorist coverage from that liability insurer.

1354 (b) (i) All persons, including governmental entities, that are engaged in the business of,  
1355 or that accept payment for, transporting natural persons by motor vehicle, and all school  
1356 districts that provide transportation services for their students, shall provide coverage for all  
1357 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,  
1358 uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

1359 (ii) This coverage is secondary to any other insurance covering an injured covered  
1360 person.

1361 (c) Uninsured motorist coverage:

1362 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'

1363 Compensation Act;

1364 (ii) may not be subrogated by the Workers' Compensation insurance carrier;

1365 (iii) may not be reduced by any benefits provided by Workers' Compensation  
1366 insurance;

1367 (iv) may be reduced by health insurance subrogation only after the covered person has  
1368 been made whole;

1369 (v) may not be collected for bodily injury or death sustained by a person:

1370 (A) while committing a violation of Section 41-1a-1314;

1371 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated  
1372 in violation of Section 41-1a-1314; or

1373 (C) while committing a felony; and

1374 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:

1375 (A) for a person under 18 years of age who is injured within the scope of Subsection  
1376 (4)(c)(v) but limited to medical and funeral expenses; or

1377 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured  
1378 within the course and scope of the law enforcement officer's duties.

1379 (d) As used in this Subsection (4) [~~(i) "Governmental entity" has the same meaning as~~  
1380 ~~under Section 63-30-2.~~ (ii) "Motor], "motor vehicle" has the same meaning as under Section  
1381 41-1a-102.

1382 (5) When a covered person alleges that an uninsured motor vehicle under Subsection  
1383 (2)(b) proximately caused an accident without touching the covered person or the motor  
1384 vehicle occupied by the covered person, the covered person must show the existence of the  
1385 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered  
1386 person's testimony.

1387 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor  
1388 vehicles may not be added together, combined, or stacked to determine the limit of insurance  
1389 coverage available to an injured person for any one accident.

1390 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under  
1391 Subsection (7)(b)(ii).

1392 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest  
1393 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered  
1394 person is the named insured or an insured family member.

1395 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered  
1396 person is occupying.

1397 (iv) Neither the primary nor the secondary coverage may be set off against the other.

1398 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary  
1399 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall  
1400 be secondary coverage.

1401 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,  
1402 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if  
1403 the motor vehicle is described in the policy under which a claim is made, or if the motor  
1404 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.  
1405 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a  
1406 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to  
1407 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy  
1408 under which he is a covered person.

1409 (b) Each of the following persons may also recover uninsured motorist benefits under  
1410 any one other policy in which they are described as a "covered person" as defined in Subsection  
1411 (1):

1412 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

1413 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying  
1414 or using a motor vehicle that is not owned, leased, or furnished, to the covered person, to the  
1415 covered person's spouse, or to the covered person's resident parent or resident sibling.

1416 (c) (i) A covered person may recover benefits from no more than two additional  
1417 policies, one additional policy from each parent's household if the covered person is:

1418 (A) a dependent minor of parents who reside in separate households; and

1419 (B) injured while occupying or using a motor vehicle that is not owned, leased, or  
1420 furnished to the covered person, the covered person's resident parent, or to the covered person's

1421 resident sibling.

1422 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of  
1423 the damages that the limit of liability of each parent's policy of uninsured motorist coverage  
1424 bears to the total of all uninsured coverage applicable to the accident.

1425 (d) A covered person's recovery under any available policies may not exceed the full  
1426 amount of damages.

1427 (e) A covered person in Subsection (7)(b) is not barred against making subsequent  
1428 elections if recovery is unavailable under previous elections.

1429 (8) (a) As used in this section, "underinsured motor vehicle" includes a motor vehicle,  
1430 the operation, maintenance, or use of which is covered under a liability policy at the time of an  
1431 injury-causing occurrence, but which has insufficient liability coverage to compensate fully the  
1432 injured party for all special and general damages.

1433 (b) The term "underinsured motor vehicle" does not include:

1434 (i) a motor vehicle that is covered under the liability coverage of the same policy that  
1435 also contains the underinsured motorist coverage;

1436 (ii) an uninsured motor vehicle as defined in Subsection (2); or

1437 (iii) a motor vehicle owned or leased by the named insured, the named insured's  
1438 spouse, or any dependant of the named insured.

1439 (9) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)  
1440 provides coverage for covered persons who are legally entitled to recover damages from  
1441 owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease,  
1442 or death.

1443 (ii) A covered person occupying or using a motor vehicle owned, leased, or furnished  
1444 to the covered person, the covered person's spouse, or covered person's resident relative may  
1445 recover underinsured benefits only if the motor vehicle is:

1446 (A) described in the policy under which a claim is made; or

1447 (B) a newly acquired or replacement motor vehicle covered under the terms of the  
1448 policy.

1449 (b) For new policies written on or after January 1, 2001, the limits of underinsured  
1450 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle  
1451 liability coverage or the maximum underinsured motorist coverage limits available by the

1452 insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a  
1453 lesser amount by signing an acknowledgment form provided by the insurer that:

- 1454 (i) waives the higher coverage;
- 1455 (ii) reasonably explains the purpose of underinsured motorist coverage; and
- 1456 (iii) discloses the additional premiums required to purchase underinsured motorist  
1457 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability  
1458 coverage or the maximum underinsured motorist coverage limits available by the insurer under  
1459 the insured's motor vehicle policy.

1460 (c) Self-insurers, including governmental entities, may elect to provide underinsured  
1461 motorist coverage in an amount that is less than their maximum self-insured retention under  
1462 Subsections (9)(b) and (9)(g) by issuing a declaratory memorandum or policy statement from  
1463 the chief financial officer or chief risk officer that declares the:

- 1464 (i) self-insured entity's coverage level; and
- 1465 (ii) process for filing an underinsured motorist claim.
- 1466 (d) Underinsured motorist coverage may not be sold with limits that are less than  
1467 \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any  
1468 one accident.

1469 (e) The acknowledgment under Subsection (9)(b) continues for that issuer of the  
1470 underinsured motorist coverage until the insured, in writing, requests different underinsured  
1471 motorist coverage from the insurer.

1472 (f) The named insured's underinsured motorist coverage, as described in Subsection  
1473 (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor  
1474 vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off  
1475 against the liability coverage of the owner or operator of an underinsured motor vehicle, but  
1476 shall be added to, combined with, or stacked upon the liability coverage of the owner or  
1477 operator of the underinsured motor vehicle to determine the limit of coverage available to the  
1478 injured person.

1479 (g) (i) A named insured may reject underinsured motorist coverage by an express  
1480 writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

1481 (ii) This written rejection shall be on a form provided by the insurer that includes a  
1482 reasonable explanation of the purpose of underinsured motorist coverage and when it would be

1483 applicable.

1484 (iii) This rejection continues for that issuer of the liability coverage until the insured in  
1485 writing requests underinsured motorist coverage from that liability insurer.

1486 (h) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
1487 policies existing on that date, the insurer shall disclose in the same medium as the premium  
1488 renewal notice, an explanation of the purpose of underinsured motorist coverage and the costs  
1489 associated with increasing the coverage in amounts up to and including the maximum amount  
1490 available by the insurer under the insured's motor vehicle policy.

1491 (ii) The disclosure shall be sent to all insureds that carry underinsured motorist  
1492 coverage limits in an amount less than the insured's motor vehicle liability policy limits or the  
1493 maximum underinsured motorist coverage limits available by the insurer under the insured's  
1494 motor vehicle policy.

1495 (10) (a) (i) Except as provided in this Subsection (10), a covered person injured in a  
1496 motor vehicle described in a policy that includes underinsured motorist benefits may not elect  
1497 to collect underinsured motorist coverage benefits from any other motor vehicle insurance  
1498 policy.

1499 (ii) The limit of liability for underinsured motorist coverage for two or more motor  
1500 vehicles may not be added together, combined, or stacked to determine the limit of insurance  
1501 coverage available to an injured person for any one accident.

1502 (iii) Subsection (10)(a)(ii) applies to all persons except a covered person as defined  
1503 under Subsections (10)(b)(i) and (ii).

1504 (b) (i) Except as provided in Subsection (10)(b)(ii), a covered person injured while  
1505 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the  
1506 covered person, the covered person's spouse, or the covered person's resident parent or resident  
1507 sibling, may also recover benefits under any one other policy under which they are a covered  
1508 person.

1509 (ii) (A) A covered person may recover benefits from no more than two additional  
1510 policies, one additional policy from each parent's household if the covered person is:

1511 (I) a dependent minor of parents who reside in separate households; and

1512 (II) injured while occupying or using a motor vehicle that is not owned, leased, or  
1513 furnished to the covered person, the covered person's resident parent, or the covered person's

1514 resident sibling.

1515 (B) Each parent's policy under this Subsection (10)(b)(ii) is liable only for the  
1516 percentage of the damages that the limit of liability of each parent's policy of underinsured  
1517 motorist coverage bears to the total of all underinsured coverage applicable to the accident.

1518 (iii) A covered person's recovery under any available policies may not exceed the full  
1519 amount of damages.

1520 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall  
1521 be primary coverage, and the coverage elected by a person described under Subsections (1)(a)  
1522 and (b) shall be secondary coverage.

1523 (v) The primary and the secondary coverage may not be set off against the other.

1524 (vi) A covered person as defined under Subsection (10)(b)(i) is entitled to the highest  
1525 limits of underinsured motorist coverage under only one additional policy per household  
1526 applicable to that covered person as a named insured, spouse, or relative.

1527 (vii) A covered injured person is not barred against making subsequent elections if  
1528 recovery is unavailable under previous elections.

1529 (c) Underinsured motorist coverage:

1530 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'  
1531 Compensation Act;

1532 (ii) may not be subrogated by the Workers' Compensation insurance carrier;

1533 (iii) may not be reduced by any benefits provided by Workers' Compensation  
1534 insurance;

1535 (iv) may be reduced by health insurance subrogation only after the covered person has  
1536 been made whole;

1537 (v) may not be collected for bodily injury or death sustained by a person:

1538 (A) while committing a violation of Section 41-1a-1314;

1539 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated  
1540 in violation of Section 41-1a-1314; or

1541 (C) while committing a felony; and

1542 (vi) notwithstanding Subsection (10)(c)(v), may be recovered:

1543 (A) for a person under 18 years of age who is injured within the scope of Subsection  
1544 (10)(c)(v) but limited to medical and funeral expenses; or

1545 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured  
1546 within the course and scope of the law enforcement officer's duties.

1547 (11) The inception of the loss under Subsection 31A-21-313(1) for underinsured  
1548 motorist claims occurs upon the date of the last liability policy payment.

1549 (12) (a) Within five business days after notification in a manner specified by the  
1550 department that all liability insurers have tendered their liability policy limits, the underinsured  
1551 carrier shall either:

1552 (i) waive any subrogation claim the underinsured carrier may have against the person  
1553 liable for the injuries caused in the accident; or

1554 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

1555 (b) If neither option is exercised under Subsection (12)(a), the subrogation claim is  
1556 deemed to be waived by the underinsured carrier.

1557 (13) Except as otherwise provided in this section, a covered person may seek, subject  
1558 to the terms and conditions of the policy, additional coverage under any policy:

1559 (a) that provides coverage for damages resulting from motor vehicle accidents; and

1560 (b) that is not required to conform to Section 31A-22-302.

1561 Section 8. Section **63-30a-3** is amended to read:

1562 **63-30a-3. Payment of reimbursement of attorneys' fees and court costs.**

1563 (1) A request for reimbursement of attorneys' fees and court costs shall be filed in the  
1564 manner provided in Sections [~~63-30-36 and 63-30-37~~] 63-30d-902 and 63-30d-903.

1565 (2) (a) Any reimbursement of attorneys' fees and court costs filed on behalf of an  
1566 officer or employee of the state shall be paid from funds appropriated to the department or  
1567 division that employed the officer or employee at the time of the act or omission that gave rise  
1568 to the indictment or information.

1569 (b) If those funds are unavailable, the reimbursement shall be paid from the General  
1570 Fund upon approval by the Board of Examiners and legislative appropriation.

1571 Section 9. Section **63-30d-101** is enacted to read:

1572 **CHAPTER 30d. GOVERNMENTAL IMMUNITY ACT OF UTAH**

1573 **Part 1. General Provisions**

1574 **63-30d-101. Title, scope, and intent.**

1575 (1) This chapter is known as the "Governmental Immunity Act of Utah."

1576           (2) (a) The waivers and retentions of immunity found in this chapter apply to all  
1577 functions of government, no matter how labeled.

1578           (b) This single, comprehensive chapter, governs all claims against governmental  
1579 entities or against their employees or agents arising out of the performance of the employee's  
1580 duties, within the scope of employment, or under color of authority.

1581           Section 10. Section **63-30d-102** is enacted to read:

1582           **63-30d-102. Definitions.**

1583           As used in this chapter:

1584           (1) "Claim" means any asserted demand for or cause of action for money or damages,  
1585 whether arising under the common law, under state constitutional provisions, or under state  
1586 statutes, against a governmental entity or against an employee in the employee's personal  
1587 capacity.

1588           (2) (a) "Employee" includes:

1589           (i) a governmental entity's officers, employees, servants, trustees, or commissioners;

1590           (ii) members of a governing body;

1591           (iii) members of a government entity board;

1592           (iv) members of a government entity commission;

1593           (v) members of an advisory body, officers, and employees of a Children's Justice  
1594 Center created in accordance with Section 67-5b-104;

1595           (vi) student teachers holding a letter of authorization in accordance with Sections  
1596 53A-6-103 and 53A-6-104;

1597           (vii) educational aides;

1598           (viii) students engaged in providing services to members of the public in the course of  
1599 an approved medical, nursing, or other professional health care clinical training program;

1600           (ix) volunteers as defined by Subsection 67-20-2(3); and

1601           (x) tutors.

1602           (b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or  
1603 not the individual holding that position receives compensation.

1604           (c) "Employee" does not include an independent contractor.

1605           (3) "Governmental entity" means the state and its political subdivisions as both are  
1606 defined in this section.

1607           (4) (a) "Governmental function" means each activity, undertaking, or operation of a  
1608 governmental entity.

1609           (b) "Governmental function" includes each activity, undertaking, or operation  
1610 performed by a department, agency, employee, agent, or officer of a governmental entity.

1611           (c) "Governmental function" includes a governmental entity's failure to act.

1612           (5) "Injury" means death, injury to a person, damage to or loss of property, or any other  
1613 injury that a person may suffer to his person or estate, that would be actionable if inflicted by a  
1614 private person or his agent.

1615           (6) "Personal injury" means an injury of any kind other than property damage.

1616           (7) "Political subdivision" means any county, city, town, school district, public transit  
1617 district, redevelopment agency, special improvement or taxing district, special district, an entity  
1618 created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation  
1619 Act, or other governmental subdivision or public corporation.

1620           (8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in  
1621 real or personal property.

1622           (9) "State" means the state of Utah, and includes each office, department, division,  
1623 agency, authority, commission, board, institution, hospital, college, university, children's  
1624 justice center, or other instrumentality of the state.

1625           (10) "Willful misconduct" means the intentional doing of a wrongful act, or the  
1626 wrongful failure to act, without just cause or excuse, where the actor is aware that his conduct  
1627 will probably result in injury.

1628           Section 11. Section **63-30d-201** is enacted to read:

1629                   **Part 2. Governmental Immunity -- Statement, Scope, and Effect.**

1630                   **63-30d-201. Immunity of governmental entities from suit.**

1631           (1) Except as may be otherwise provided in this chapter, each governmental entity and  
1632 each employee of a governmental entity are immune from suit for any injury that results from  
1633 the exercise of a governmental function.

1634           (2) Notwithstanding the waiver of immunity provisions of Section 63-30d-301, a  
1635 governmental entity, its officers, and its employees are immune from suit for any injury or  
1636 damage resulting from the implementation of or the failure to implement measures to:

1637           (a) control the causes of epidemic and communicable diseases and other conditions

1638 significantly affecting the public health or necessary to protect the public health as set out in  
1639 Title 26A, Chapter 1, Local Health Departments;

1640 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,  
1641 Chapter 23b, Detection of Public Health Emergencies Act; and

1642 (c) respond to a national, state, or local emergency, a public health emergency as  
1643 defined in Section 26-23b-102, or a declaration by the President of the United States or other  
1644 federal official requesting public health-related activities.

1645 Section 12. Section **63-30d-202** is enacted to read:

1646 **63-30d-202. Act provisions not construed as admission or denial of liability --**

1647 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**  
1648 **personal liability.**

1649 (1) (a) Nothing contained in this chapter, unless specifically provided, may be  
1650 construed as an admission or denial of liability or responsibility by or for a governmental entity  
1651 or its employees.

1652 (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and  
1653 liability of the entity shall be determined as if the entity were a private person.

1654 (c) No cause of action or basis of liability is created by any waiver of immunity in this  
1655 chapter, nor may any provision of this chapter be construed as imposing strict liability or  
1656 absolute liability.

1657 (2) Nothing in this chapter may be construed as adversely affecting any immunity from  
1658 suit that a governmental entity or employee may otherwise assert under state or federal law.

1659 (3) (a) Except as provided in Subsection (3)(c), an action under this chapter against a  
1660 governmental entity for an injury caused by an act or omission that occurs during the  
1661 performance of an employee's duties, within the scope of employment, or under color of  
1662 authority is a plaintiff's exclusive remedy.

1663 (b) Judgment under this chapter against a governmental entity is a complete bar to any  
1664 action by the claimant, based upon the same subject matter, against the employee whose act or  
1665 omission gave rise to the claim.

1666 (c) A plaintiff may not bring or pursue any civil action or proceeding based upon the  
1667 same subject matter against the employee or the estate of the employee whose act or omission  
1668 gave rise to the claim, unless:



1700 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
1701 Act, if the failure to deliver the contractual amount of water is due to drought, other natural  
1702 condition, or safety condition that causes a deficiency in the amount of available water.

1703 (2) Immunity from suit of each governmental entity is waived:

1704 (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
1705 personal property;

1706 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
1707 property, to determine any adverse claim on real or personal property, or to obtain an  
1708 adjudication about any mortgage or other lien that the governmental entity may have or claim  
1709 on real or personal property;

1710 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
1711 merchandise, or other property while it is in the possession of any governmental entity or  
1712 employee, if the property was seized for the purpose of forfeiture under any provision of state  
1713 law;

1714 (d) subject to Subsection 63-30d-302(1), as to any action brought under the authority of  
1715 Article I, Section 22 of the Utah Constitution, for the recovery of compensation from the  
1716 governmental entity when the governmental entity has taken or damaged private property for  
1717 public uses without just compensation;

1718 (e) subject to Subsection 63-30d-302(2), as to any action brought to recover attorneys'  
1719 fees under Sections 63-2-405 and 63-2-802; or

1720 (f) for actual damages under Title 67, Chapter 21, Utah's Protection of Public  
1721 Employees Act.

1722 (3) (a) Except as provided in Subsection (3)(b), immunity from suit of each  
1723 governmental entity is waived as to any injury caused by:

1724 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
1725 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

1726 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
1727 or other public improvement.

1728 (b) Immunity is not waived if the injury arises out of, in connection with, or results  
1729 from:

1730 (i) a latent dangerous or latent defective condition of any highway, road, street, alley,

1731 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or  
1732 (ii) a latent dangerous or latent defective condition of any public building, structure,  
1733 dam, reservoir, or other public improvement.

1734 (4) Immunity from suit of each governmental entity is waived as to any injury  
1735 proximately caused by a negligent act or omission of an employee committed within the scope  
1736 of employment.

1737 (5) Immunity is not waived under Subsections (3) and (4) if the injury arises out of, in  
1738 connection with, or results from:

1739 (a) the exercise or performance, or the failure to exercise or perform, a discretionary  
1740 function, whether or not the discretion is abused;

1741 (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional  
1742 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of  
1743 mental anguish, or violation of civil rights;

1744 (c) the issuance, denial, suspension, or revocation of or by the failure or refusal to  
1745 issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar  
1746 authorization;

1747 (d) a failure to make an inspection or by making an inadequate or negligent inspection;

1748 (e) the institution or prosecution of any judicial or administrative proceeding, even if  
1749 malicious or without probable cause;

1750 (f) a misrepresentation by an employee whether or not it is negligent or intentional;

1751 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil  
1752 disturbances;

1753 (h) the collection of and assessment of taxes;

1754 (i) the activities of the Utah National Guard;

1755 (j) the incarceration of any person in any state prison, county or city jail, or other place  
1756 of legal confinement;

1757 (k) any natural condition on publicly owned or controlled lands, any condition existing  
1758 in connection with an abandoned mine or mining operation, or any activity authorized by the  
1759 School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State  
1760 Lands;

1761 (l) research or implementation of cloud management or seeding for the clearing of fog;

- 1762 (m) the management of flood waters, earthquakes, or natural disasters;
  - 1763 (n) the construction, repair, or operation of flood or storm systems;
  - 1764 (o) the operation of an emergency vehicle, while being driven in accordance with the
  - 1765 requirements of Section 41-6-14;
  - 1766 (p) the activities of:
  - 1767 (i) providing emergency medical assistance;
  - 1768 (ii) fighting fire;
  - 1769 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
  - 1770 (iv) emergency evacuations;
  - 1771 (v) transporting or removing injured persons to a place where emergency medical
  - 1772 assistance can be rendered or where the person can be transported by a licensed ambulance
  - 1773 service; or
  - 1774 (vi) intervening during dam emergencies;
  - 1775 (q) the exercise or performance, or the failure to exercise or perform, any function
  - 1776 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or
  - 1777 (r) unauthorized access to government records, data, or electronic information systems
  - 1778 by any person or entity.
- 1779 Section 14. Section **63-30d-302** is enacted to read:
- 1780 **63-30d-302. Specific remedies -- "Takings" actions -- Government Records Access**
- 1781 **and Management Actions.**
- 1782 (1) In any action brought under the authority of Article I, Section 22 of the Utah
- 1783 Constitution for the recovery of compensation from the governmental entity when the
- 1784 governmental entity has taken or damaged private property for public uses without just
- 1785 compensation, compensation and damages shall be assessed according to the requirements of
- 1786 Title 78, Chapter 34, Eminent Domain.
- 1787 (2) (a) Notwithstanding Section 63-30d-401, a notice of claim for attorneys' fees under
- 1788 Subsection 63-30d-301(2)(e) may be filed contemporaneously with a petition for review under
- 1789 Section 63-2-404.
- 1790 (b) The provisions of Subsection 63-30d-403(1), relating to the governmental entity's
- 1791 response to a claim, and the provisions of 63-30d-601, requiring an undertaking, do not apply
- 1792 to a notice of claim for attorneys' fees filed contemporaneously with a petition for review under

1793 Section 63-2-404.

1794 (c) Any other claim under this chapter that is related to a claim for attorneys' fees under  
1795 Subsection 63-30d-301(2)(e) may be brought contemporaneously with the claim for attorneys'  
1796 fees or in a subsequent action.

1797 Section 15. Section **63-30d-401** is enacted to read:

1798 **Part 4. Notice of Claim Against a Governmental Entity or a Government Employee.**

1799 **63-30d-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability --**  
1800 **Appointment of guardian ad litem.**

1801 (1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of  
1802 limitations that would apply if the claim were against a private person begins to run.

1803 (b) The statute of limitations does not begin to run until a claimant knew, or with the  
1804 exercise of reasonable diligence should have known:

1805 (i) that the claimant had a claim against the governmental entity or its employee; and

1806 (ii) the identity of the governmental entity or the name of the employee.

1807 (c) The burden to prove the exercise of reasonable diligence is upon the claimant.

1808 (2) Any person having a claim against a governmental entity, or against its employee  
1809 for an act or omission occurring during the performance of the employee's duties, within the  
1810 scope of employment, or under color of authority shall file a written notice of claim with the  
1811 entity before maintaining an action, regardless of whether or not the function giving rise to the  
1812 claim is characterized as governmental.

1813 (3) (a) The notice of claim shall set forth:

1814 (i) a brief statement of the facts;

1815 (ii) the nature of the claim asserted;

1816 (iii) the damages incurred by the claimant so far as they are known; and

1817 (iv) if the claim is being pursued against a governmental employee individually as  
1818 provided in Subsection 63-30d-202(3)(c), the name of the employee.

1819 (b) The notice of claim shall be:

1820 (i) signed by the person making the claim or that person's agent, attorney, parent, or  
1821 legal guardian; and

1822 (ii) directed and delivered by hand or by mail according to the requirements of Section  
1823 68-3-8.5 to the office of:

1824 (A) the city recorder or town clerk/recorder, when the claim is against an incorporated  
1825 city or town;

1826 (B) the county clerk, when the claim is against a county;

1827 (C) the superintendent or business administrator of the board, when the claim is against  
1828 a school district or board of education;

1829 (D) the presiding officer or secretary/clerk of the board, when the claim is against a  
1830 special district;

1831 (E) the attorney general, when the claim is against the State of Utah;

1832 (F) a member of the governing board, the executive director, or executive secretary,  
1833 when the claim is against any other public board, commission, or body; or

1834 (G) the agent authorized by a governmental entity to receive the notice of claim by the  
1835 governmental entity under Subsection (5)(e).

1836 (4) (a) If an injury that may reasonably be expected to result in a claim against a  
1837 governmental entity is sustained by a claimant who is under the age of majority or mentally  
1838 incompetent, that governmental entity may file a request with the court for the appointment of a  
1839 guardian ad litem for the potential claimant.

1840 (b) If a guardian ad litem is appointed, the time for filing a claim under Section  
1841 63-30d-402 begins when the order appointing the guardian is issued.

1842 (5) (a) Each governmental entity subject to suit under this chapter shall file a statement  
1843 with the Division of Corporations and Commercial Code within the Department of Commerce  
1844 containing:

1845 (i) the name and address of the governmental entity;

1846 (ii) the office or agent designated to receive a notice of claim; and

1847 (iii) the address at which it is to be directed and delivered.

1848 (b) Each governmental entity shall update its statement as necessary to ensure that the  
1849 information is accurate.

1850 (c) The Division of Corporations and Commercial Code shall develop a form for  
1851 governmental entities to complete that provides the information required by Subsection (5)(a).

1852 (d) (i) Newly incorporated municipalities shall file the statement required by  
1853 Subsection (5)(a) at the time that the statement of incorporation and boundaries is filed with the  
1854 lieutenant governor under Section 10-1-106.

1855 (ii) Newly incorporated special districts shall file the statement required by Subsection  
1856 (5)(a) at the time that the written notice of creation of the district is filed with the State Tax  
1857 Commission and State Auditor under Sections 17A-1-102 and 17B-3-215.

1858 (e) A governmental entity may, in its statement, identify an agent authorized by the  
1859 entity to accept notices of claim on its behalf.

1860 (6) The Division of Corporations and Commercial Code shall:

1861 (a) maintain an index of the statements required by this section arranged both  
1862 alphabetically by entity and by county of operation; and

1863 (b) make the indices available to the public both electronically and via hard copy.

1864 (7) A governmental entity may not challenge the validity of a notice of claim on the  
1865 grounds that it was not directed and delivered to the proper office or agent if the error is caused  
1866 by the governmental entity's failure to file or update the statement required by Subsection (5).

1867 Section 16. Section **63-30d-402** is enacted to read:

1868 **63-30d-402. Time for filing notice of claim.**

1869 A claim against a governmental entity, or against an employee for an act or omission  
1870 occurring during the performance of the employee's duties, within the scope of employment, or  
1871 under color of authority, is barred unless notice of claim is filed with the person and according  
1872 to the requirements of Section 63-30d-401 within one year after the claim arises regardless of  
1873 whether or not the function giving rise to the claim is characterized as governmental.

1874 Section 17. Section **63-30d-403** is enacted to read:

1875 **63-30d-403. Notice of Claim -- Approval or denial by governmental entity or**  
1876 **insurance carrier within 60 days -- remedies for denial of claim.**

1877 (1) (a) Within 60 days of the filing of a notice of claim, the governmental entity or its  
1878 insurance carrier shall inform the claimant in writing that the claim has either been approved or  
1879 denied.

1880 (b) A claim is considered to be denied if, at the end of the 60-day period, the  
1881 governmental entity or its insurance carrier has failed to approve or deny the claim.

1882 (2) (a) If the claim is denied, a claimant may institute an action in the district court  
1883 against the governmental entity or an employee of the entity.

1884 (b) The claimant shall begin the action within one year after denial of the claim or  
1885 within one year after the denial period specified in this chapter has expired, regardless of

1886 whether or not the function giving rise to the claim is characterized as governmental.

1887 Section 18. Section **63-30d-501** is enacted to read:

1888 **Part 5. Legal Actions Under This Chapter -- Jurisdiction and Venue**

1889 **63-30d-501. Jurisdiction of district courts over actions.**

1890 (1) The district courts have exclusive, original jurisdiction over any action brought  
1891 under this chapter.

1892 (2) An action brought under this chapter may not be tried as a small claims action.

1893 Section 19. Section **63-30d-502** is enacted to read:

1894 **63-30d-502. Venue of actions.**

1895 (1) Actions against the state may be brought in the county in which the claim arose or  
1896 in Salt Lake County.

1897 (2) (a) Actions against a county may be brought in the county in which the claim arose,  
1898 or in the defendant county, or, upon leave granted by a district court judge of the defendant  
1899 county, in any county contiguous to the defendant county.

1900 (b) Leave may be granted ex parte.

1901 (3) Actions against all other political subdivisions, including cities and towns, shall be  
1902 brought in the county in which the political subdivision is located or in the county in which the  
1903 claim arose.

1904 Section 20. Section **63-30d-601** is enacted to read:

1905 **Part 6. Legal Actions Under This Chapter -- Procedures, Requirements, Damages, and**  
1906 **Limitations on Judgments**

1907 **63-30d-601. Actions governed by Utah Rules of Civil Procedure -- Undertaking**  
1908 **required.**

1909 (1) An action brought under this chapter shall be governed by the Utah Rules of Civil  
1910 Procedure to the extent that they are consistent with this chapter.

1911 (2) At the time the action is filed, the plaintiff shall file an undertaking in a sum fixed  
1912 by the court that is:

1913 (a) not less than \$300; and

1914 (b) conditioned upon payment by the plaintiff of taxable costs incurred by the  
1915 governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover  
1916 judgment.

1917 Section 21. Section **63-30d-602** is enacted to read:

1918 **63-30d-602. Compromise and settlement of claims.**

1919 (1) A political subdivision, after conferring with its legal officer or other legal counsel  
1920 if it does not have a legal officer, may compromise and settle any action as to the damages or  
1921 other relief sought.

1922 (2) The risk manager in the Department of Administrative Services may compromise  
1923 and settle any action against the state for which the Risk Management Fund may be liable:

1924 (a) on the risk manager's own authority, if the amount of the settlement is \$25,000 or  
1925 less;

1926 (b) with the concurrence of the attorney general or the attorney general's representative  
1927 and the executive director of the Department of Administrative Services if the amount of the  
1928 settlement is \$25,000.01 to \$100,000; or

1929 (c) by complying with the procedures and requirements of Title 63, Chapter 38b, State  
1930 Settlement Agreements, if the amount of the settlement is more than \$100,000.

1931 Section 22. Section **63-30d-603** is enacted to read:

1932 **63-30d-603. Exemplary or punitive damages prohibited -- Governmental entity**  
1933 **exempt from execution, attachment, or garnishment.**

1934 (1) (a) A judgment may not be rendered against a governmental entity for exemplary or  
1935 punitive damages.

1936 (b) If a governmental entity would be required to pay the judgment under Section  
1937 63-30d-902 or 63-30d-903, the governmental entity shall pay any judgment or portion of any  
1938 judgment entered against its employee in the employee's personal capacity even if the judgment  
1939 is for or includes exemplary or punitive damages.

1940 (2) Execution, attachment, or garnishment may not issue against a governmental entity.

1941 Section 23. Section **63-30d-604** is enacted to read:

1942 **63-30d-604. Limitation of judgments against governmental entity or employee --**  
1943 **Process for adjustment of limits.**

1944 (1) (a) Except as provided in Subsections (2) and (3), if a judgment for damages for  
1945 personal injury against a governmental entity, or an employee whom a governmental entity has  
1946 a duty to indemnify, exceeds \$553,500 for one person in any one occurrence, or \$1,107,000 for  
1947 two or more persons in any one occurrence, the court shall reduce the judgment to that amount.

1948           (b) A court may not award judgment of more than \$553,500 for injury or death to one  
1949 person regardless of whether or not the function giving rise to the injury is characterized as  
1950 governmental.

1951           (c) Except as provided in Subsection (2), if a judgment for property damage against a  
1952 governmental entity, or an employee whom a governmental entity has a duty to indemnify,  
1953 exceeds \$221,400 in any one occurrence, the court shall reduce the judgment to that amount,  
1954 regardless of whether or not the function giving rise to the damage is characterized as  
1955 governmental.

1956           (2) The damage limits established in this section do not apply to damages awarded as  
1957 compensation when a governmental entity has taken or damaged private property for public use  
1958 without just compensation.

1959           (3) The limitations of judgments established in Subsection (1) shall be adjusted  
1960 according to the methodology set forth in Subsection (4).

1961           (4) (a) Each year, the risk manager shall:

1962           (i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5),  
1963 Internal Revenue Code;

1964           (ii) calculate the increase or decrease in the limitation of judgment amounts established  
1965 in this section as a percentage equal to the percentage difference between the consumer price  
1966 index for the preceding calendar year and the consumer price index for calendar year 2003; and

1967           (iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the  
1968 limitation of judgment amounts established in Subsection (1) to the nearest \$100.

1969           (b) Each even-numbered year after 2004, the risk manager shall make rules, which  
1970 become effective no later than July 1, that establish the new limitation of judgment amounts.

1971           (c) Adjustments made by the risk manager to the limitation of judgment amounts  
1972 established by this section have prospective effect only from the date the rules establishing the  
1973 new limitation of judgment take effect and those adjusted limitations of judgment apply only to  
1974 claims for injuries or losses that occur after the effective date of the rules that establish those  
1975 new limitations of judgement.

1976           Section 24. Section **63-30d-701** is enacted to read:

1977                           **Part 7. Payment Process and Sources for Paying Proved Claims**  
1978   **Against Governmental Entities**

1979            **63-30d-701. Payment of claim or judgment against state -- Presentment for**  
1980 **payment.**

1981            (1) (a) Each claim, as defined by Subsection 63-30d-102(1), that is approved by the  
1982 state or any final judgment obtained against the state shall be presented for payment to:

1983            (i) the state risk manager; or

1984            (ii) the office, agency, institution, or other instrumentality involved, if payment by that  
1985 instrumentality is otherwise permitted by law.

1986            (b) If payment of the claim is not authorized by law, the judgment or claim shall be  
1987 presented to the board of examiners for action as provided in Section 63-6-10.

1988            (c) If a judgment against the state is reduced by the operation of Section 63-30d-604,  
1989 the claimant may submit the excess claim to the board of examiners.

1990            Section 25. Section **63-30d-702** is enacted to read:

1991            **63-30d-702. Payment of claim or judgment against political subdivision --**  
1992 **Procedure by governing body -- payment options.**

1993            (1) (a) Each claim approved by a political subdivision or any final judgment obtained  
1994 against a political subdivision shall be submitted to the governing body of the political  
1995 subdivision.

1996            (b) The governing body shall pay the claim immediately from the general funds of the  
1997 political subdivision unless:

1998            (i) the funds are appropriated to some other use or restricted by law or contract for  
1999 other purposes; or

2000            (ii) the political subdivision opts to pay the claim or award in installments under  
2001 Subsection (2).

2002            (2) If the subdivision is unable to pay the claim or award during the current fiscal year,  
2003 it may pay the claim or award in not more than ten ensuing annual installments of equal size or  
2004 in whatever other installments that are agreeable to the claimant.

2005            Section 26. Section **63-30d-703** is enacted to read:

2006            **63-30d-703. Reserve funds for payment of claims or purchase of insurance**  
2007 **created by political subdivisions.**

2008            Any political subdivision may create and maintain a reserve fund or, may jointly with  
2009 one or more other political subdivisions, make contributions to a joint reserve fund, for the

2010 purpose of:

2011 (1) making payment of claims against the cooperating subdivisions when they become  
2012 payable under this chapter; or

2013 (2) for the purpose of purchasing liability insurance to protect the cooperating  
2014 subdivisions from any or all risks created by this chapter.

2015 Section 27. Section **63-30d-704** is enacted to read:

2016 **63-30d-704. Tax levy by political subdivisions for payment of claims, judgments,**  
2017 **or insurance premiums.**

2018 (1) Notwithstanding any provision of law to the contrary, a political subdivision may  
2019 levy an annual property tax sufficient to pay:

2020 (a) any claim, settlement, or judgment;

2021 (b) the costs to defend against any claim, settlement, or judgment; or

2022 (c) for the establishment and maintenance of a reserve fund for the payment of claims,  
2023 settlements, or judgments that may be reasonably anticipated.

2024 (2) (a) The payments authorized to pay for punitive damages or to pay the premium for  
2025 authorized insurance is money spent for a public purpose within the meaning of this section  
2026 and Article XIII, Sec. 5, Utah Constitution, even though, as a result of the levy, the maximum  
2027 levy as otherwise restricted by law is exceeded.

2028 (b) No levy under this section may exceed .0001 per dollar of taxable value of taxable  
2029 property.

2030 (c) The revenues derived from this levy may not be used for any purpose other than  
2031 those specified in this section.

2032 Section 28. Section **63-30d-801** is enacted to read:

2033 **Part 8. Self-insurance and Purchase of Liability Insurance by Governmental Entities**

2034 **63-30d-801. Insurance -- Self-insurance or purchase of liability insurance by**  
2035 **governmental entity authorized -- Establishment of trust accounts for self-insurance.**

2036 (1) Any governmental entity within the state may self-insure, purchase commercial  
2037 insurance, or self-insure and purchase excess commercial insurance in excess of the statutory  
2038 limits of this chapter against:

2039 (a) any risk created or recognized by this chapter; or

2040 (b) any action for which a governmental entity or its employee may be held liable.

2041 (2) (a) In addition to any other reasonable means of self-insurance, a governmental  
2042 entity may self-insure with respect to specified classes of claims by establishing a trust account.

2043 (b) In creating the trust account, the governmental entity shall ensure that:

2044 (i) the trust account is managed by an independent private trustee; and

2045 (ii) the independent private trustee has authority, with respect to claims covered by the  
2046 trust, to:

2047 (A) expend both principal and earnings of the trust account solely to pay the costs of  
2048 investigation, discovery, and other pretrial and litigation expenses including attorneys' fees; and

2049 (B) pay all sums for which the governmental entity may be adjudged liable or for  
2050 which a compromise settlement may be agreed upon.

2051 (c) Notwithstanding any law to the contrary, the trust agreement between the  
2052 governmental entity and the trustee may authorize the trustee to:

2053 (i) employ counsel to defend actions against the entity and its employees;

2054 (ii) protect and safeguard the assets of the trust;

2055 (iii) provide for claims investigation and adjustment services;

2056 (iv) employ expert witnesses and consultants; and

2057 (v) provide other services and functions that are necessary and proper to carry out the  
2058 purposes of the trust.

2059 (d) The monies and interest earned on the trust fund may be invested by following the  
2060 procedures and requirements of Title 51, Chapter 7, State Money Management Act, and are  
2061 subject to audit by the state auditor.

2062 Section 29. Section **63-30d-802** is enacted to read:

2063 **63-30d-802. Insurance -- Liability insurance -- Government vehicles operated by**  
2064 **employees outside scope of employment.**

2065 (1) A governmental entity that owns vehicles driven by an employee of the  
2066 governmental entity with the express or implied consent of the entity, but which, at the time  
2067 liability is incurred as a result of an automobile accident, is not being driven and used within  
2068 the course and scope of the driver's employment is, subject to Subsection (2), considered to  
2069 provide the driver with the insurance coverage required by Title 41, Chapter 12a, Financial  
2070 Responsibility of Motor Vehicle Owners and Operators Act.

2071 (2) The liability coverages considered provided are the minimum limits under Section

2072 31A-22-304.

2073 Section 30. Section **63-30d-803** is enacted to read:

2074 **63-30d-803. Liability insurance -- Construction of policy not in compliance with**  
2075 **act.**

2076 (1) If any insurance policy, rider, or endorsement issued after June 30, 2004 that was  
2077 purchased to insure against any risk that may arise as a result of the application of this chapter  
2078 contains any condition or provision not in compliance with the requirements of this chapter,  
2079 that policy, rider, or endorsement is not invalid, but shall be construed and applied according to  
2080 the conditions and provisions that would have applied had the policy, rider, or endorsement  
2081 been in full compliance with this chapter, provided that the policy is otherwise valid.

2082 (2) If any insurance policy, rider, or endorsement issued after June 30, 1966 and before  
2083 July 1, 2004 that was purchased to insure against any risk that may arise as a result of the  
2084 application of this chapter contains any condition or provision not in compliance with the  
2085 requirements of the chapter, that policy, rider, or endorsement is not invalid, but shall be  
2086 construed and applied according to the conditions and provisions that would have applied had  
2087 the policy, rider, or endorsement been in full compliance with this chapter, provided that the  
2088 policy is otherwise valid.

2089 Section 31. Section **63-30d-804** is enacted to read:

2090 **63-30d-804. Liability insurance -- Methods for purchase or renewal.**

2091 (1) Except as provided in Subsection (2), a contract or policy of insurance may be  
2092 purchased or renewed under this chapter only upon public bid to be let to the lowest and best  
2093 bidder.

2094 (2) The purchase or renewal of insurance by the state shall be conducted in accordance  
2095 with the provisions of Title 63, Chapter 56, Utah Procurement Code.

2096 Section 32. Section **63-30d-805** is enacted to read:

2097 **63-30d-805. Liability insurance -- Insurance for employees authorized -- No right**  
2098 **to indemnification or contribution from governmental agency.**

2099 (1) (a) A governmental entity may insure any or all of its employees against liability, in  
2100 whole or in part, for injury or damage resulting from an act or omission occurring during the  
2101 performance of an employee's duties, within the scope of employment, or under color of  
2102 authority, regardless of whether or not that entity is immune from suit for that act or omission.

2103 (b) Any expenditure for that insurance is for a public purpose.

2104 (c) Under any contract or policy of insurance providing coverage on behalf of a  
2105 governmental entity or employee for any liability defined by this section, regardless of the  
2106 source of funding for the coverage, the insurer has no right to indemnification or contribution  
2107 from the governmental entity or its employee for any loss or liability covered by the contract or  
2108 policy.

2109 (2) Any surety covering a governmental entity or its employee under any faithful  
2110 performance surety bond has no right to indemnification or contribution from the governmental  
2111 entity or its employee for any loss covered by that bond based on any act or omission for which  
2112 the governmental entity would be obligated to defend or indemnify under the provisions of  
2113 Section 63-30d-902.

2114 Section 33. Section **63-30d-901** is enacted to read:

2115 **Part 9. Coverage and Representation of State Entities and Employees.**

2116 **63-30d-901. Expenses of attorney general, general counsel for state judiciary, and**  
2117 **general counsel for the Legislature in representing the state, its branches, members, or**  
2118 **employees.**

2119 (1) (a) The Office of the Attorney General has primary responsibility to provide legal  
2120 representation to the judicial, executive, and legislative branches of state government in cases  
2121 where coverage under the Risk Management Fund created by Section 63A-4-201 applies.

2122 (b) When the attorney general has primary responsibility to provide legal representation  
2123 to the judicial or legislative branches, the attorney general shall consult with the general  
2124 counsel for the state judiciary and with the general counsel for the Legislature, to solicit their  
2125 assistance in defending their respective branch, and in determining strategy and making  
2126 decisions concerning the disposition of those claims.

2127 (c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims  
2128 in those cases lies with the attorney general and the state risk manager.

2129 (2) (a) If the Judicial Council, after consultation with the general counsel for the state  
2130 judiciary, determines that the Office of the Attorney General cannot adequately defend the state  
2131 judiciary, its members, or employees because of a conflict of interest, separation of powers  
2132 concerns, or other political or legal differences, the Judicial Council may direct its general  
2133 counsel to separately represent and defend it.

2134 (b) If the general counsel for the state judiciary undertakes independent legal  
2135 representation of the state judiciary, its members, or employees, the general counsel shall notify  
2136 the state risk manager and the attorney general in writing before undertaking that  
2137 representation.

2138 (c) If the state judiciary elects to be represented by its own counsel under this section,  
2139 the decision for settlement of claims against the state judiciary, its members, or employees,  
2140 where Risk Management Fund coverage applies, lies with the general counsel for the state  
2141 judiciary and the state risk manager.

2142 (3) (a) If the Legislative Management Committee, after consultation with the general  
2143 counsel for the Legislature, determines that the Office of the Attorney General cannot  
2144 adequately defend the legislative branch, its members, or employees because of a conflict of  
2145 interest, separation of powers concerns, or other political or legal differences, the Legislative  
2146 Management Committee may direct its general counsel to separately represent and defend it.

2147 (b) If the general counsel for the Legislature undertakes independent legal  
2148 representation of the Legislature, its members, or employees, the general counsel shall notify  
2149 the state risk manager and the attorney general in writing before undertaking that  
2150 representation.

2151 (c) If the legislative branch elects to be represented by its own counsel under this  
2152 section, the decision for settlement of claims against the legislative branch, its members, or  
2153 employees, where Risk Management Fund coverage applies, lies with the general counsel for  
2154 the Legislature and the state risk manager.

2155 (4) (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the  
2156 Utah Code, the attorney general, the general counsel for the state judiciary, and the general  
2157 counsel for the Legislature may bill the Department of Administrative Services for all costs and  
2158 legal fees expended by their respective offices, including attorneys' and secretarial salaries, in  
2159 representing the state or any indemnified employee against any claim for which the Risk  
2160 Management Fund may be liable and in advising state agencies and employees regarding any of  
2161 those claims.

2162 (b) The risk manager shall draw funds from the Risk Management Fund for this  
2163 purpose.

2164 Section 34. Section **63-30d-902** is enacted to read:

2165           **63-30d-902. Defending government employee -- Request -- Cooperation --**  
2166 **Payment of judgment.**

2167           (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend  
2168 any action brought against its employee arising from an act or omission occurring:

2169           (a) during the performance of the employee's duties;

2170           (b) within the scope of the employee's employment; or

2171           (c) under color of authority.

2172           (2) (a) Before a governmental entity may defend its employee against a claim, the  
2173 employee shall make a written request to the governmental entity to defend him:

2174           (i) within ten days after service of process upon him; or

2175           (ii) within a longer period that would not prejudice the governmental entity in  
2176 maintaining a defense on his behalf; or

2177           (iii) within a period that would not conflict with notice requirements imposed on the  
2178 entity in connection with insurance carried by the entity relating to the risk involved.

2179           (b) If the employee fails to make a request, or fails to reasonably cooperate in the  
2180 defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil  
2181 Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend  
2182 the employee, nor pay any judgment, compromise, or settlement against the employee in  
2183 respect to the claim.

2184           (3) The governmental entity may decline to defend, or, subject to any court rule or  
2185 order, decline to continue to defend, an action against an employee if it determines:

2186           (a) that the act or omission in question did not occur:

2187           (i) during the performance of the employee's duties;

2188           (ii) within the scope of his employment; or

2189           (iii) under color of authority; or

2190           (b) that the injury or damage on which the claim was based resulted from conditions  
2191 set forth in Subsection 63-30d-202(3)(c).

2192           (4) (a) Within ten days of receiving a written request to defend an employee, the  
2193 governmental entity shall inform the employee whether or not it shall provide a defense, and, if  
2194 it refuses to provide a defense, the basis for its refusal.

2195           (b) A refusal by the entity to provide a defense is not admissible for any purpose in the

2196 action in which the employee is a defendant.

2197 (5) Except as provided in Subsection (6), if a governmental entity conducts the defense  
2198 of an employee, the governmental entity shall pay any judgment based upon the claim.

2199 (6) A governmental entity may conduct the defense of an employee under a reservation  
2200 of rights under which the governmental entity reserves the right not to pay a judgment if any of  
2201 the conditions set forth in Subsection (3) are established.

2202 (7) (a) Nothing in this section or Section 63-30d-903 affects the obligation of a  
2203 governmental entity to provide insurance coverage according to the requirements of Subsection  
2204 41-12a-301(3) and Section 63-30d-802.

2205 (b) When a governmental entity declines to defend, or declines to continue to defend,  
2206 an action against its employee under any of the conditions set forth in Subsection (3), it shall  
2207 still provide coverage up to the amount specified in Sections 31A-22-304.

2208 Section 35. Section **63-30d-903** is enacted to read:

2209 **63-30d-903. Recovery of judgment paid and defense costs by government**  
2210 **employee.**

2211 (1) Subject to Subsection (2), if an employee pays a judgment entered against him, or  
2212 any portion of it, that the governmental entity is required to pay under Section 63-30d-902, the  
2213 employee may recover from the governmental entity the amount of the payment and the  
2214 reasonable costs incurred in the employee's defense.

2215 (2) (a) If a governmental entity does not conduct the defense of an employee against a  
2216 claim, or conducts the defense under a reservation of rights as provided in Subsection  
2217 63-30d-902(6), the employee may recover from the governmental entity under Subsection (1) if  
2218 the employee can prove that none of the conditions set forth in Subsection 63-30d-202(3)(c)  
2219 applied.

2220 (b) The employee has the burden of proof that none of the conditions set forth in  
2221 Subsection 63-30d-202(3)(c) applied.

2222 Section 36. Section **63-30d-904** is enacted to read:

2223 **63-30d-904. Indemnification of governmental entity by employee not required.**

2224 If a governmental entity pays all or part of a judgment, compromise, or settlement based  
2225 on a claim against the governmental entity or an employee, the employee is not required to  
2226 indemnify the governmental entity for the payment.

2227 Section 37. Section **63-56-59** is amended to read:

2228 **63-56-59. Jurisdiction of district court.**

2229 (1) The district court shall have jurisdiction over an action, whether the action is at law  
2230 or in equity, between the state and:

2231 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in  
2232 connection with the solicitation or award of a contract;

2233 (b) a person who is subject to a suspension or debarment proceeding; and

2234 (c) a contractor, for any cause of action which arises under, or by virtue of a contract.

2235 (2) The provisions of [~~Sections 63-30-11, 63-30-12, 63-30-14, 63-30-15, and~~  
2236 ~~63-30-19~~] Title 63, Chapter 30d, Part 4, Notice of Claim Against a Governmental Entity or a  
2237 Government Employee, and Section 63-30d-601 do not apply to actions brought under this  
2238 chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or  
2239 appealing an unsuccessful bid or offer.

2240 Section 38. Section **76-6-513** is amended to read:

2241 **76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.**

2242 (1) As used in this section:

2243 (a) "Fiduciary" is as defined in Section 22-1-1.

2244 (b) "Financial institution" means "depository institution" and "trust company" as  
2245 defined in Section 7-1-103.

2246 (c) "Governmental entity" is as defined in Section [~~63-30-2~~] 63-30d-102.

2247 (d) "Person" does not include a financial institution whose fiduciary functions are  
2248 supervised by the Department of Financial Institutions or a federal regulatory agency.

2249 (e) "Property" is as defined in Section 76-6-401.

2250 (f) "Public monies" is as defined in Section 76-8-401.

2251 (2) A person is guilty of unlawfully dealing with property by a fiduciary if he deals  
2252 with property that has been entrusted to him as a fiduciary, or property of a governmental  
2253 entity, public monies, or of a financial institution, in a manner which he knows is a violation  
2254 of his duty and which involves substantial risk of loss or detriment to the owner or to a person  
2255 for whose benefit the property was entrusted. A violation of this Subsection (2) is punishable  
2256 under Section 76-6-412.

2257 (3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if,

2258 without permission of the owner of the property or some other person with authority to give  
2259 permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some  
2260 party, other than the owner or the person for whose benefit the property was entrusted, the  
2261 property that has been entrusted to the fiduciary.

2262 (b) An offense under Subsection (3)(a) is punishable as:

2263 (i) a felony of the second degree if the value of the property wrongfully pledged is or  
2264 exceeds \$5,000;

2265 (ii) a felony of the third degree if the value of the property wrongfully pledged is or  
2266 exceeds \$1,000 but is less than \$5,000;

2267 (iii) a class A misdemeanor if the value of the property is or exceeds \$300, but is less  
2268 than \$1,000 or the actor has been twice before convicted of theft, robbery, burglary with intent  
2269 to commit theft, or unlawful dealing with property by a fiduciary; or

2270 (iv) a class B misdemeanor if the value of the property is less than \$300.

2271 Section 39. Section **78-3a-113 (Superseded 07/01/04)** is amended to read:

2272 **78-3a-113 (Superseded 07/01/04). Minor taken into custody by peace officer,**  
2273 **private citizen, or probation officer -- Grounds -- Notice requirements -- Release or**  
2274 **detention -- Grounds for peace officer to take adult into custody.**

2275 (1) A minor may be taken into custody by a peace officer without order of the court if:

2276 (a) in the presence of the officer the minor has violated a state law, federal law, local  
2277 law, or municipal ordinance;

2278 (b) there are reasonable grounds to believe the minor has committed an act which if  
2279 committed by an adult would be a felony;

2280 (c) the minor is seriously endangered in his surroundings or if the minor seriously  
2281 endangers others, and immediate removal appears to be necessary for his protection or the  
2282 protection of others;

2283 (d) there are reasonable grounds to believe the minor has run away or escaped from his  
2284 parents, guardian, or custodian; or

2285 (e) there is reason to believe the minor is subject to the state's compulsory education  
2286 law and that the minor is absent from school without legitimate or valid excuse, subject to  
2287 Section 53A-11-105.

2288 (2) (a) A private citizen or a probation officer may take a minor into custody if under

2289 the circumstances he could make a citizen's arrest if the minor was an adult.

2290 (b) A probation officer may also take a minor into custody under Subsection (1) or if  
2291 the minor has violated the conditions of probation, if the minor is under the continuing  
2292 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not  
2293 immediately available.

2294 (3) (a) If an officer or other person takes a minor into temporary custody, he shall  
2295 without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be  
2296 released to the care of his parent or other responsible adult, unless his immediate welfare or the  
2297 protection of the community requires his detention.

2298 (b) Before the minor is released, the parent or other person to whom the minor is  
2299 released shall be required to sign a written promise on forms supplied by the court to bring the  
2300 minor to the court at a time set or to be set by the court.

2301 (4) (a) A minor may not be held in temporary custody by law enforcement any longer  
2302 than is reasonably necessary to obtain his name, age, residence, and other necessary  
2303 information and to contact his parents, guardian, or custodian.

2304 (b) If the minor is not released under Subsection (3), he shall be taken to a place of  
2305 detention or shelter without unnecessary delay.

2306 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly  
2307 file with the detention or shelter facility a written report on a form provided by the division  
2308 stating the details of the presently alleged offense, the facts which bring the minor within the  
2309 jurisdiction of the juvenile court, and the reason the minor was not released by law  
2310 enforcement.

2311 (b) (i) The designated youth corrections facility staff person shall immediately review  
2312 the form and determine, based on the guidelines for detention admissions established by the  
2313 Division of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether to admit the  
2314 minor to secure detention, admit the minor to home detention, place the minor in a placement  
2315 other than detention, or return the minor home upon written promise to bring the minor to the  
2316 court at a time set, or without restriction.

2317 (ii) If the designated youth corrections facility staff person determines to admit the  
2318 minor to home detention, that staff person shall notify the juvenile court of that determination.  
2319 The court shall order that notice be provided to the designated persons in the local law

2320 enforcement agency and the school or transferee school, if applicable, which the minor attends  
2321 of the home detention. The designated persons may receive the information for purposes of the  
2322 minor's supervision and student safety.

2323 (iii) Any employee of the local law enforcement agency and the school which the  
2324 minor attends who discloses the notification of home detention is not:

2325 (A) civilly liable except when disclosure constitutes fraud or [~~malice~~] willful  
2326 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2327 (B) civilly or criminally liable except when disclosure constitutes a knowing violation  
2328 of Section 63-2-801.

2329 (c) A minor may not be admitted to detention unless the minor is detainable based on  
2330 the guidelines or the minor has been brought to detention pursuant to a judicial order or  
2331 division warrant pursuant to Subsection 62A-7-112(8).

2332 (d) If a minor taken to detention does not qualify for admission under the guidelines  
2333 established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall  
2334 arrange appropriate placement.

2335 (e) If a minor is taken into custody and admitted to a secure detention or shelter  
2336 facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and  
2337 shall promptly notify the court of the placement.

2338 (f) If the minor is admitted to a secure detention or shelter facility outside the county of  
2339 his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that  
2340 detention shall continue, the judge or commissioner shall direct the sheriff of the county of the  
2341 minor's residence to transport the minor to a detention or shelter facility as provided in this  
2342 section.

2343 (6) A person may be taken into custody by a peace officer without a court order if the  
2344 person is in apparent violation of a protective order or if there is reason to believe that a minor  
2345 is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

2346 Section 40. Section **78-3a-113 (Effective 07/01/04)** is amended to read:

2347 **78-3a-113 (Effective 07/01/04). Minor taken into custody by peace officer, private**  
2348 **citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention --**  
2349 **Grounds for peace officer to take adult into custody.**

2350 (1) A minor may be taken into custody by a peace officer without order of the court if:

2351 (a) in the presence of the officer the minor has violated a state law, federal law, local  
2352 law, or municipal ordinance;

2353 (b) there are reasonable grounds to believe the minor has committed an act which if  
2354 committed by an adult would be a felony;

2355 (c) the minor is seriously endangered in his surroundings or if the minor seriously  
2356 endangers others, and immediate removal appears to be necessary for his protection or the  
2357 protection of others;

2358 (d) there are reasonable grounds to believe the minor has run away or escaped from his  
2359 parents, guardian, or custodian; or

2360 (e) there is reason to believe the minor is subject to the state's compulsory education  
2361 law and that the minor is absent from school without legitimate or valid excuse, subject to  
2362 Section 53A-11-105.

2363 (2) (a) A private citizen or a probation officer may take a minor into custody if under  
2364 the circumstances he could make a citizen's arrest if the minor was an adult.

2365 (b) A probation officer may also take a minor into custody under Subsection (1) or if  
2366 the minor has violated the conditions of probation, if the minor is under the continuing  
2367 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not  
2368 immediately available.

2369 (3) (a) If an officer or other person takes a minor into temporary custody, he shall  
2370 without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be  
2371 released to the care of his parent or other responsible adult, unless his immediate welfare or the  
2372 protection of the community requires his detention.

2373 (b) Before the minor is released, the parent or other person to whom the minor is  
2374 released shall be required to sign a written promise on forms supplied by the court to bring the  
2375 minor to the court at a time set or to be set by the court.

2376 (4) (a) A minor may not be held in temporary custody by law enforcement any longer  
2377 than is reasonably necessary to obtain his name, age, residence, and other necessary  
2378 information and to contact his parents, guardian, or custodian.

2379 (b) If the minor is not released under Subsection (3), he shall be taken to a place of  
2380 detention or shelter without unnecessary delay.

2381 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly

2382 file with the detention or shelter facility a written report on a form provided by the division  
2383 stating the details of the presently alleged offense, the facts which bring the minor within the  
2384 jurisdiction of the juvenile court, and the reason the minor was not released by law  
2385 enforcement.

2386 (b) (i) The designated youth corrections facility staff person shall immediately review  
2387 the form and determine, based on the guidelines for detention admissions established by the  
2388 Division of Juvenile Justice Services under Sections 62A-7-104 and 62A-7-205, whether to  
2389 admit the minor to secure detention, admit the minor to home detention, place the minor in a  
2390 placement other than detention, or return the minor home upon written promise to bring the  
2391 minor to the court at a time set, or without restriction.

2392 (ii) If the designated youth corrections facility staff person determines to admit the  
2393 minor to home detention, that staff person shall notify the juvenile court of that determination.  
2394 The court shall order that notice be provided to the designated persons in the local law  
2395 enforcement agency and the school or transferee school, if applicable, which the minor attends  
2396 of the home detention. The designated persons may receive the information for purposes of the  
2397 minor's supervision and student safety.

2398 (iii) Any employee of the local law enforcement agency and the school which the  
2399 minor attends who discloses the notification of home detention is not:

2400 (A) civilly liable except when disclosure constitutes fraud or [~~malice~~] willful  
2401 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2402 (B) civilly or criminally liable except when disclosure constitutes a knowing violation  
2403 of Section 63-2-801.

2404 (c) A minor may not be admitted to detention unless the minor is detainable based on  
2405 the guidelines or the minor has been brought to detention pursuant to a judicial order or  
2406 division warrant pursuant to Subsection 62A-7-112(8).

2407 (d) If a minor taken to detention does not qualify for admission under the guidelines  
2408 established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall  
2409 arrange appropriate placement.

2410 (e) If a minor is taken into custody and admitted to a secure detention or shelter  
2411 facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and  
2412 shall promptly notify the court of the placement.

2413 (f) If the minor is admitted to a secure detention or shelter facility outside the county of  
2414 his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that  
2415 detention shall continue, the judge or commissioner shall direct the sheriff of the county of the  
2416 minor's residence to transport the minor to a detention or shelter facility as provided in this  
2417 section.

2418 (6) A person may be taken into custody by a peace officer without a court order if the  
2419 person is in apparent violation of a protective order or if there is reason to believe that a minor  
2420 is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

2421 Section 41. Section **78-3a-114 (Superseded 07/01/04)** is amended to read:

2422 **78-3a-114 (Superseded 07/01/04). Placement of minor in detention or shelter**  
2423 **facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of**  
2424 **minors for criminal proceedings -- Bail laws inapplicable, exception.**

2425 (1) (a) A minor may not be placed or kept in a secure detention facility pending court  
2426 proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or  
2427 custodian and the minor is detainable based on guidelines promulgated by the Division of  
2428 Youth Corrections.

2429 (b) A minor who must be taken from his home but who does not require physical  
2430 restriction shall be given temporary care in a shelter facility and may not be placed in a  
2431 detention facility.

2432 (c) A minor may not be placed or kept in a shelter facility pending court proceedings  
2433 unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

2434 (2) After admission to a detention facility pursuant to the guidelines established by the  
2435 Division of Youth Corrections and immediate investigation by an authorized officer of the  
2436 court, the judge or the officer shall order the release of the minor to his parents, guardian, or  
2437 custodian if it is found he can be safely returned to their care, either upon written promise to  
2438 bring the minor to the court at a time set or without restriction.

2439 (a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a  
2440 facility within 24 hours after notification of release, the parent, guardian, or custodian is  
2441 responsible for the cost of care for the time the minor remains in the facility.

2442 (b) The facility shall determine the cost of care.

2443 (c) Any money collected under Subsection (2) shall be retained by the Division of

2444 Youth Corrections to recover the cost of care for the time the minor remains in the facility.

2445 (3) (a) When a minor is detained in a detention or shelter facility, the parents or  
2446 guardian shall be informed by the person in charge of the facility that they have the right to a  
2447 prompt hearing in court to determine whether the minor is to be further detained or released.

2448 (b) Detention hearings shall be held by the judge or by a commissioner.

2449 (c) The court may, at any time, order the release of the minor, whether a detention  
2450 hearing is held or not.

2451 (d) If the minor is released, and the minor remains in the facility, because the parents,  
2452 guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be  
2453 responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

2454 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a  
2455 detention hearing, excluding weekends and holidays, unless the court has entered an order for  
2456 continued detention.

2457 (b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter  
2458 hearing, excluding weekends and holidays, unless a court order for extended shelter has been  
2459 entered by the court after notice to all parties described in Section 78-3a-306.

2460 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide  
2461 the court with all information received from the person who brought the minor to the detention  
2462 facility.

2463 (d) If the court finds at a detention hearing that it is not safe to release the minor, the  
2464 judge or commissioner may order the minor to be held in the facility or be placed in another  
2465 appropriate facility, subject to further order of the court.

2466 (e) (i) After a detention hearing has been held, only the court may release a minor from  
2467 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to  
2468 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued  
2469 detention is necessary.

2470 (ii) If the court orders home detention, it shall direct that notice of its order be provided  
2471 to designated persons in the appropriate local law enforcement agency and the school or  
2472 transferee school, if applicable, which the minor attends. The designated persons may receive  
2473 the information for purposes of the minor's supervision and student safety.

2474 (iii) Any employee of the local law enforcement agency and the school which the

2475 minor attends who discloses the court's order of probation is not:

2476 (A) civilly liable except when the disclosure constitutes fraud or [~~malice~~] willful  
2477 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2478 (B) civilly or criminally liable except when disclosure constitutes a knowing violation  
2479 of Section 63-2-801.

2480 (5) A minor may not be held in a detention facility, following a dispositional order of  
2481 the court for nonsecure substitute care as defined in Section 62A-4a-101, or for  
2482 community-based placement under Section 62A-7-101 for longer than 72 hours, excluding  
2483 weekends and holidays. The period of detention may be extended by the court for one period  
2484 of seven calendar days if:

2485 (a) the Division of Youth Corrections or another agency responsible for placement files  
2486 a written petition with the court requesting the extension and setting forth good cause; and

2487 (b) the court enters a written finding that it is in the best interests of both the minor and  
2488 the community to extend the period of detention.

2489 (6) The agency requesting an extension shall promptly notify the detention facility that  
2490 a written petition has been filed.

2491 (7) The court shall promptly notify the detention facility regarding its initial disposition  
2492 and any ruling on a petition for an extension, whether granted or denied.

2493 (8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place  
2494 for adult detention except as provided by Section 62A-7-201 or unless certified as an adult  
2495 pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement  
2496 facilities apply to this Subsection (8).

2497 (b) A minor 16 years of age or older whose conduct or condition endangers the safety  
2498 or welfare of others in the detention facility for minors may, by court order that specifies the  
2499 reasons, be detained in another place of confinement considered appropriate by the court,  
2500 including a jail or other place of confinement for adults. However, a secure youth corrections  
2501 facility is not an appropriate place of confinement for detention purposes under this section.

2502 (9) A sheriff, warden, or other official in charge of a jail or other facility for the  
2503 detention of adult offenders or persons charged with crime shall immediately notify the  
2504 juvenile court when a minor who is or appears to be under 18 years of age is received at the  
2505 facility and shall make arrangements for the transfer of the minor to a detention facility, unless

2506 otherwise ordered by the juvenile court.

2507 (10) This section does not apply to a minor who is brought to the adult facility under  
2508 charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal  
2509 proceedings in the district court under Section 78-3a-603.

2510 (11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may  
2511 be detained in a jail or other place of detention used for adults charged with crime.

2512 (12) Provisions of law regarding bail are not applicable to minors detained or taken  
2513 into custody under this chapter, except that bail may be allowed:

2514 (a) if a minor who need not be detained lives outside this state; or

2515 (b) when a minor who need not be detained comes within one of the classes in  
2516 Subsection 78-3a-503(11).

2517 (13) Section 76-8-418 is applicable to a minor who willfully and intentionally commits  
2518 an act against a jail or other place of confinement, including a Division of Youth Corrections  
2519 detention, shelter, or secure confinement facility which would be a third degree felony if  
2520 committed by an adult.

2521 Section 42. Section **78-3a-114 (Effective 07/01/04)** is amended to read:

2522 **78-3a-114 (Effective 07/01/04). Placement of minor in detention or shelter facility**  
2523 **-- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of minors**  
2524 **for criminal proceedings -- Bail laws inapplicable, exception.**

2525 (1) (a) A minor may not be placed or kept in a secure detention facility pending court  
2526 proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or  
2527 custodian and the minor is detainable based on guidelines promulgated by the Division of  
2528 Juvenile Justice Services.

2529 (b) A minor who must be taken from his home but who does not require physical  
2530 restriction shall be given temporary care in a shelter facility and may not be placed in a  
2531 detention facility.

2532 (c) A minor may not be placed or kept in a shelter facility pending court proceedings  
2533 unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

2534 (2) After admission to a detention facility pursuant to the guidelines established by the  
2535 Division of Juvenile Justice Services and immediate investigation by an authorized officer of  
2536 the court, the judge or the officer shall order the release of the minor to his parents, guardian, or

2537 custodian if it is found he can be safely returned to their care, either upon written promise to  
2538 bring the minor to the court at a time set or without restriction.

2539 (a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a  
2540 facility within 24 hours after notification of release, the parent, guardian, or custodian is  
2541 responsible for the cost of care for the time the minor remains in the facility.

2542 (b) The facility shall determine the cost of care.

2543 (c) Any money collected under this Subsection (2) shall be retained by the Division of  
2544 Juvenile Justice Services to recover the cost of care for the time the minor remains in the  
2545 facility.

2546 (3) (a) When a minor is detained in a detention or shelter facility, the parents or  
2547 guardian shall be informed by the person in charge of the facility that they have the right to a  
2548 prompt hearing in court to determine whether the minor is to be further detained or released.

2549 (b) Detention hearings shall be held by the judge or by a commissioner.

2550 (c) The court may, at any time, order the release of the minor, whether a detention  
2551 hearing is held or not.

2552 (d) If the minor is released, and the minor remains in the facility, because the parents,  
2553 guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be  
2554 responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

2555 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a  
2556 detention hearing, excluding weekends and holidays, unless the court has entered an order for  
2557 continued detention.

2558 (b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter  
2559 hearing, excluding weekends and holidays, unless a court order for extended shelter has been  
2560 entered by the court after notice to all parties described in Section 78-3a-306.

2561 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide  
2562 the court with all information received from the person who brought the minor to the detention  
2563 facility.

2564 (d) If the court finds at a detention hearing that it is not safe to release the minor, the  
2565 judge or commissioner may order the minor to be held in the facility or be placed in another  
2566 appropriate facility, subject to further order of the court.

2567 (e) (i) After a detention hearing has been held, only the court may release a minor from

2568 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to  
2569 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued  
2570 detention is necessary.

2571 (ii) If the court orders home detention, it shall direct that notice of its order be provided  
2572 to designated persons in the appropriate local law enforcement agency and the school or  
2573 transferee school, if applicable, which the minor attends. The designated persons may receive  
2574 the information for purposes of the minor's supervision and student safety.

2575 (iii) Any employee of the local law enforcement agency and the school which the  
2576 minor attends who discloses the court's order of probation is not:

2577 (A) civilly liable except when the disclosure constitutes fraud or [~~malice~~] willful  
2578 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2579 (B) civilly or criminally liable except when disclosure constitutes a knowing violation  
2580 of Section 63-2-801.

2581 (5) A minor may not be held in a detention facility, following a dispositional order of  
2582 the court for nonsecure substitute care as defined in Section 62A-4a-101, or for  
2583 community-based placement under Section 62A-7-101 for longer than 72 hours, excluding  
2584 weekends and holidays. The period of detention may be extended by the court for one period  
2585 of seven calendar days if:

2586 (a) the Division of Juvenile Justice Services or another agency responsible for  
2587 placement files a written petition with the court requesting the extension and setting forth good  
2588 cause; and

2589 (b) the court enters a written finding that it is in the best interests of both the minor and  
2590 the community to extend the period of detention.

2591 (6) The agency requesting an extension shall promptly notify the detention facility that  
2592 a written petition has been filed.

2593 (7) The court shall promptly notify the detention facility regarding its initial disposition  
2594 and any ruling on a petition for an extension, whether granted or denied.

2595 (8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place  
2596 for adult detention except as provided by Section 62A-7-201 or unless certified as an adult  
2597 pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement  
2598 facilities apply to this Subsection (8).

2599 (b) A minor 16 years of age or older whose conduct or condition endangers the safety  
2600 or welfare of others in the detention facility for minors may, by court order that specifies the  
2601 reasons, be detained in another place of confinement considered appropriate by the court,  
2602 including a jail or other place of confinement for adults. However, a secure youth corrections  
2603 facility is not an appropriate place of confinement for detention purposes under this section.

2604 (9) A sheriff, warden, or other official in charge of a jail or other facility for the  
2605 detention of adult offenders or persons charged with crime shall immediately notify the  
2606 juvenile court when a minor who is or appears to be under 18 years of age is received at the  
2607 facility and shall make arrangements for the transfer of the minor to a detention facility, unless  
2608 otherwise ordered by the juvenile court.

2609 (10) This section does not apply to a minor who is brought to the adult facility under  
2610 charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal  
2611 proceedings in the district court under Section 78-3a-603.

2612 (11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may  
2613 be detained in a jail or other place of detention used for adults charged with crime.

2614 (12) Provisions of law regarding bail are not applicable to minors detained or taken  
2615 into custody under this chapter, except that bail may be allowed:

2616 (a) if a minor who need not be detained lives outside this state; or

2617 (b) when a minor who need not be detained comes within one of the classes in  
2618 Subsection 78-3a-503(11).

2619 (13) Section 76-8-418 is applicable to a minor who willfully and intentionally commits  
2620 an act against a jail or other place of confinement, including a Division of Juvenile Justice  
2621 Services detention, shelter, or secure confinement facility which would be a third degree felony  
2622 if committed by an adult.

2623 Section 43. Section **78-3a-118 (Superseded 07/01/04)** is amended to read:

2624 **78-3a-118 (Superseded 07/01/04). Adjudication of jurisdiction of juvenile court --**  
2625 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**  
2626 **Obtaining DNA sample.**

2627 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the  
2628 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its  
2629 jurisdiction over the minor. However, in cases within the provisions of Subsection

2630 78-3a-104(1), findings of fact are not necessary.

2631 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of  
2632 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided  
2633 to the school superintendent of the district in which the minor resides or attends school. Notice  
2634 shall be made to the district superintendent within three days of the adjudication and shall  
2635 include the specific offenses for which the minor was adjudicated.

2636 (2) Upon adjudication the court may make the following dispositions by court order:

2637 (a) (i) The court may place the minor on probation or under protective supervision in  
2638 the minor's own home and upon conditions determined by the court, including compensatory  
2639 service as provided in Section 78-11-20.7.

2640 (ii) The court may place the minor in state supervision with the probation department  
2641 of the court, under the legal custody of:

2642 (A) his parent or guardian;

2643 (B) the Division of Youth Corrections; or

2644 (C) the Division of Child and Family Services.

2645 (iii) If the court orders probation or state supervision, the court shall direct that notice  
2646 of its order be provided to designated persons in the local law enforcement agency and the  
2647 school or transferee school, if applicable, which the minor attends. The designated persons  
2648 may receive the information for purposes of the minor's supervision and student safety.

2649 (iv) Any employee of the local law enforcement agency and the school which the  
2650 minor attends who discloses the court's order of probation is not:

2651 (A) civilly liable except when the disclosure constitutes fraud or [~~malice~~] willful  
2652 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2653 (B) civilly or criminally liable except when the disclosure constitutes a knowing  
2654 violation of Section 63-2-801.

2655 (b) The court may place the minor in the legal custody of a relative or other suitable  
2656 person, with or without probation or protective supervision, but the juvenile court may not  
2657 assume the function of developing foster home services.

2658 (c) (i) The court may:

2659 (A) vest legal custody of the minor in the Division of Child and Family Services,  
2660 Division of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

2661 (B) order the Department of Human Services to provide dispositional  
2662 recommendations and services.

2663 (ii) For minors who may qualify for services from two or more divisions within the  
2664 Department of Human Services, the court may vest legal custody with the department.

2665 (iii) (A) Minors who are committed to the custody of the Division of Child and Family  
2666 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,  
2667 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title  
2668 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

2669 (B) Prior to the court entering an order to place a minor in the custody of the Division  
2670 of Child and Family Services on grounds other than abuse or neglect, the court shall provide  
2671 the division with notice of the hearing no later than five days before the time specified for the  
2672 hearing so the division may attend the hearing.

2673 (C) Prior to committing a minor to the custody of the Division of Child and Family  
2674 Services, the court shall make a finding as to what reasonable efforts have been attempted to  
2675 prevent the minor's removal from his home.

2676 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure  
2677 confinement.

2678 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,  
2679 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of  
2680 Youth Corrections.

2681 (e) The court may commit the minor, subject to the court retaining continuing  
2682 jurisdiction over him, to the temporary custody of the Division of Youth Corrections for  
2683 observation and evaluation for a period not to exceed 45 days, which period may be extended  
2684 up to 15 days at the request of the director of the Division of Youth Corrections.

2685 (f) (i) The court may commit the minor to a place of detention or an alternative to  
2686 detention for a period not to exceed 30 days subject to the court retaining continuing  
2687 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions  
2688 ordered by the court.

2689 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

2690 (A) an act which if committed by an adult would be a criminal offense; or

2691 (B) contempt of court under Section 78-3a-901.

2692 (g) The court may vest legal custody of an abused, neglected, or dependent minor in  
2693 the Division of Child and Family Services or any other appropriate person in accordance with  
2694 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and  
2695 Dependency Proceedings.

2696 (h) The court may place the minor on a ranch or forestry camp, or similar facility for  
2697 care and also for work, if possible, if the person, agency, or association operating the facility  
2698 has been approved or has otherwise complied with all applicable state and local laws. A minor  
2699 placed in a forestry camp or similar facility may be required to work on fire prevention,  
2700 forestation and reforestation, recreational works, forest roads, and on other works on or off the  
2701 grounds of the facility and may be paid wages, subject to the approval of and under conditions  
2702 set by the court.

2703 (i) (A) The court may order the minor to repair, replace, or otherwise make restitution  
2704 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in  
2705 Section 78-3a-318 and impose fines in limited amounts.

2706 (B) The court may also require the minor to reimburse an individual, entity, or  
2707 governmental agency who offered and paid a reward to a person or persons for providing  
2708 information resulting in a court adjudication that the minor is within the jurisdiction of the  
2709 juvenile court due to the commission of a criminal offense.

2710 (C) If a minor has been returned to this state under the Interstate Compact on Juveniles,  
2711 the court may order the minor to make restitution for costs expended by any governmental  
2712 entity for the return.

2713 (j) The court may issue orders necessary for the collection of restitution and fines  
2714 ordered by the court, including garnishments, wage withholdings, and executions.

2715 (k) (i) The court may through its probation department encourage the development of  
2716 employment or work programs to enable minors to fulfill their obligations under Subsection  
2717 (2)(i) and for other purposes considered desirable by the court.

2718 (ii) Consistent with the order of the court, the probation officer may permit the minor  
2719 found to be within the jurisdiction of the court to participate in a program of work restitution or  
2720 compensatory service in lieu of paying part or all of the fine imposed by the court.

2721 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in  
2722 addition to any other disposition authorized by this section:

2723 (A) restrain the minor from driving for periods of time the court considers necessary;  
2724 and

2725 (B) take possession of the minor's driver license.

2726 (ii) The court may enter any other disposition under Subsection (2)(1)(i); however, the  
2727 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by  
2728 Section 78-3a-506.

2729 (m) (i) When a minor is found within the jurisdiction of the juvenile court under  
2730 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug  
2731 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court  
2732 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a  
2733 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory  
2734 completion of an approved substance abuse prevention or treatment program may be credited  
2735 by the court as compensatory service hours.

2736 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
2737 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court  
2738 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order  
2739 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory  
2740 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an  
2741 approved substance abuse prevention or treatment program may be credited by the court as  
2742 compensatory service hours.

2743 (n) The court may order that the minor be examined or treated by a physician, surgeon,  
2744 psychiatrist, or psychologist or that he receive other special care. For these purposes the court  
2745 may place the minor in a hospital or other suitable facility.

2746 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the  
2747 interest of the minor, and may appoint as guardian a public or private institution or agency in  
2748 which legal custody of the minor is vested.

2749 (ii) In placing a minor under the guardianship or legal custody of an individual or of a  
2750 private agency or institution, the court shall give primary consideration to the welfare of the  
2751 minor. When practicable, the court may take into consideration the religious preferences of the  
2752 minor and of the minor's parents.

2753 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable

2754 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or  
2755 any other person who has been made a party to the proceedings. Conditions may include:

2756 (A) parent-time by the parents or one parent;

2757 (B) restrictions on the minor's associates;

2758 (C) restrictions on the minor's occupation and other activities; and

2759 (D) requirements to be observed by the parents or custodian.

2760 (ii) A minor whose parents or guardians successfully complete a family or other  
2761 counseling program may be credited by the court for detention, confinement, or probation time.

2762 (q) The court may order the minor to be committed to the physical custody of a local  
2763 mental health authority, in accordance with the procedures and requirements of Title 62A,  
2764 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and  
2765 Mental Health.

2766 (r) (i) The court may make an order committing a minor within its jurisdiction to the  
2767 Utah State Developmental Center if the minor has mental retardation in accordance with the  
2768 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

2769 (ii) The court shall follow the procedure applicable in the district courts with respect to  
2770 judicial commitments to the Utah State Developmental Center when ordering a commitment  
2771 under Subsection (2)(r)(i).

2772 (s) The court may terminate all parental rights upon a finding of compliance with the  
2773 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2774 (t) The court may make any other reasonable orders for the best interest of the minor or  
2775 as required for the protection of the public, except that a person younger than 18 years of age  
2776 may not be committed to jail or prison.

2777 (u) The court may combine the dispositions listed in this section if they are compatible.

2778 (v) Before depriving any parent of custody, the court shall give due consideration to the  
2779 rights of parents concerning their minor. The court may transfer custody of a minor to another  
2780 person, agency, or institution in accordance with the requirements and procedures of Title 78,  
2781 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

2782 (w) Except as provided in Subsection (2)(y)(i), an order under this section for  
2783 probation or placement of a minor with an individual or an agency shall include a date certain  
2784 for a review of the case by the court. A new date shall be set upon each review.

2785 (x) In reviewing foster home placements, special attention shall be given to making  
2786 adoptable minors available for adoption without delay.

2787 (y) (i) The juvenile court may enter an order of permanent custody and guardianship  
2788 with a relative or individual of a minor where the court has previously acquired jurisdiction as  
2789 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an  
2790 order for child support on behalf of the minor child against the natural or adoptive parents of  
2791 the child.

2792 (ii) Orders under Subsection (2)(y)(i):

2793 (A) shall remain in effect until the minor reaches majority;

2794 (B) are not subject to review under Section 78-3a-119; and

2795 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2796 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and  
2797 permanent orders of custody and guardianship do not expire with a termination of jurisdiction  
2798 of the juvenile court.

2799 (3) In addition to the dispositions described in Subsection (2), when a minor comes  
2800 within the court's jurisdiction he may be given a choice by the court to serve in the National  
2801 Guard in lieu of other sanctions, provided:

2802 (a) the minor meets the current entrance qualifications for service in the National  
2803 Guard as determined by a recruiter, whose determination is final;

2804 (b) the minor is not under the jurisdiction of the court for any act that:

2805 (i) would be a felony if committed by an adult;

2806 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

2807 (iii) was committed with a weapon; and

2808 (c) the court retains jurisdiction over the minor under conditions set by the court and  
2809 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2810 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction  
2811 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by  
2812 designated employees of the court or, if the minor is in the legal custody of the Division of  
2813 Youth Corrections, then by designated employees of the division under Subsection  
2814 53-10-404(5)(b).

2815 (b) The responsible agency shall ensure that employees designated to collect the saliva

2816 DNA specimens receive appropriate training and that the specimens are obtained in accordance  
2817 with accepted protocol.

2818 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA  
2819 Specimen Restricted Account created in Section 53-10-407.

2820 (d) Payment of the reimbursement is second in priority to payments the minor is  
2821 ordered to make for restitution under this section and treatment under Section 78-3a-318.

2822 Section 44. Section **78-3a-118 (Effective 07/01/04)** is amended to read:

2823 **78-3a-118 (Effective 07/01/04). Adjudication of jurisdiction of juvenile court --**  
2824 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**  
2825 **Obtaining DNA sample.**

2826 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the  
2827 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its  
2828 jurisdiction over the minor. However, in cases within the provisions of Subsection  
2829 78-3a-104(1), findings of fact are not necessary.

2830 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of  
2831 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided  
2832 to the school superintendent of the district in which the minor resides or attends school. Notice  
2833 shall be made to the district superintendent within three days of the adjudication and shall  
2834 include the specific offenses for which the minor was adjudicated.

2835 (2) Upon adjudication the court may make the following dispositions by court order:

2836 (a) (i) The court may place the minor on probation or under protective supervision in  
2837 the minor's own home and upon conditions determined by the court, including compensatory  
2838 service as provided in Section 78-11-20.7.

2839 (ii) The court may place the minor in state supervision with the probation department  
2840 of the court, under the legal custody of:

2841 (A) his parent or guardian;

2842 (B) the Division of Juvenile Justice Services; or

2843 (C) the Division of Child and Family Services.

2844 (iii) If the court orders probation or state supervision, the court shall direct that notice  
2845 of its order be provided to designated persons in the local law enforcement agency and the  
2846 school or transferee school, if applicable, which the minor attends. The designated persons

2847 may receive the information for purposes of the minor's supervision and student safety.

2848 (iv) Any employee of the local law enforcement agency and the school which the  
2849 minor attends who discloses the court's order of probation is not:

2850 (A) civilly liable except when the disclosure constitutes fraud or [~~malice~~] willful  
2851 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2852 (B) civilly or criminally liable except when the disclosure constitutes a knowing  
2853 violation of Section 63-2-801.

2854 (b) The court may place the minor in the legal custody of a relative or other suitable  
2855 person, with or without probation or protective supervision, but the juvenile court may not  
2856 assume the function of developing foster home services.

2857 (c) (i) The court may:

2858 (A) vest legal custody of the minor in the Division of Child and Family Services,  
2859 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;  
2860 and

2861 (B) order the Department of Human Services to provide dispositional  
2862 recommendations and services.

2863 (ii) For minors who may qualify for services from two or more divisions within the  
2864 Department of Human Services, the court may vest legal custody with the department.

2865 (iii) (A) Minors who are committed to the custody of the Division of Child and Family  
2866 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,  
2867 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title  
2868 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

2869 (B) Prior to the court entering an order to place a minor in the custody of the Division  
2870 of Child and Family Services on grounds other than abuse or neglect, the court shall provide  
2871 the division with notice of the hearing no later than five days before the time specified for the  
2872 hearing so the division may attend the hearing.

2873 (C) Prior to committing a minor to the custody of the Division of Child and Family  
2874 Services, the court shall make a finding as to what reasonable efforts have been attempted to  
2875 prevent the minor's removal from his home.

2876 (d) (i) The court may commit the minor to the Division of Juvenile Justice Services for  
2877 secure confinement.

2878 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,  
2879 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of  
2880 Juvenile Justice Services.

2881 (e) The court may commit the minor, subject to the court retaining continuing  
2882 jurisdiction over him, to the temporary custody of the Division of Juvenile Justice Services for  
2883 observation and evaluation for a period not to exceed 45 days, which period may be extended  
2884 up to 15 days at the request of the director of the Division of Juvenile Justice Services.

2885 (f) (i) The court may commit the minor to a place of detention or an alternative to  
2886 detention for a period not to exceed 30 days subject to the court retaining continuing  
2887 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions  
2888 ordered by the court.

2889 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

2890 (A) an act which if committed by an adult would be a criminal offense; or

2891 (B) contempt of court under Section 78-3a-901.

2892 (g) The court may vest legal custody of an abused, neglected, or dependent minor in  
2893 the Division of Child and Family Services or any other appropriate person in accordance with  
2894 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and  
2895 Dependency Proceedings.

2896 (h) The court may place the minor on a ranch or forestry camp, or similar facility for  
2897 care and also for work, if possible, if the person, agency, or association operating the facility  
2898 has been approved or has otherwise complied with all applicable state and local laws. A minor  
2899 placed in a forestry camp or similar facility may be required to work on fire prevention,  
2900 forestation and reforestation, recreational works, forest roads, and on other works on or off the  
2901 grounds of the facility and may be paid wages, subject to the approval of and under conditions  
2902 set by the court.

2903 (i) (A) The court may order the minor to repair, replace, or otherwise make restitution  
2904 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in  
2905 Section 78-3a-318 and impose fines in limited amounts.

2906 (B) The court may also require the minor to reimburse an individual, entity, or  
2907 governmental agency who offered and paid a reward to a person or persons for providing  
2908 information resulting in a court adjudication that the minor is within the jurisdiction of the

2909 juvenile court due to the commission of a criminal offense.

2910 (C) If a minor has been returned to this state under the Interstate Compact on Juveniles,  
2911 the court may order the minor to make restitution for costs expended by any governmental  
2912 entity for the return.

2913 (j) The court may issue orders necessary for the collection of restitution and fines  
2914 ordered by the court, including garnishments, wage withholdings, and executions.

2915 (k) (i) The court may through its probation department encourage the development of  
2916 employment or work programs to enable minors to fulfill their obligations under Subsection  
2917 (2)(i) and for other purposes considered desirable by the court.

2918 (ii) Consistent with the order of the court, the probation officer may permit the minor  
2919 found to be within the jurisdiction of the court to participate in a program of work restitution or  
2920 compensatory service in lieu of paying part or all of the fine imposed by the court.

2921 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in  
2922 addition to any other disposition authorized by this section:

2923 (A) restrain the minor from driving for periods of time the court considers necessary;  
2924 and

2925 (B) take possession of the minor's driver license.

2926 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the  
2927 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by  
2928 Section 78-3a-506.

2929 (m) (i) When a minor is found within the jurisdiction of the juvenile court under  
2930 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug  
2931 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court  
2932 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a  
2933 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory  
2934 completion of an approved substance abuse prevention or treatment program may be credited  
2935 by the court as compensatory service hours.

2936 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
2937 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court  
2938 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order  
2939 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory

2940 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an  
2941 approved substance abuse prevention or treatment program may be credited by the court as  
2942 compensatory service hours.

2943 (n) The court may order that the minor be examined or treated by a physician, surgeon,  
2944 psychiatrist, or psychologist or that he receive other special care. For these purposes the court  
2945 may place the minor in a hospital or other suitable facility.

2946 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the  
2947 interest of the minor, and may appoint as guardian a public or private institution or agency in  
2948 which legal custody of the minor is vested.

2949 (ii) In placing a minor under the guardianship or legal custody of an individual or of a  
2950 private agency or institution, the court shall give primary consideration to the welfare of the  
2951 minor. When practicable, the court may take into consideration the religious preferences of the  
2952 minor and of the minor's parents.

2953 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable  
2954 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or  
2955 any other person who has been made a party to the proceedings. Conditions may include:

2956 (A) parent-time by the parents or one parent;

2957 (B) restrictions on the minor's associates;

2958 (C) restrictions on the minor's occupation and other activities; and

2959 (D) requirements to be observed by the parents or custodian.

2960 (ii) A minor whose parents or guardians successfully complete a family or other  
2961 counseling program may be credited by the court for detention, confinement, or probation time.

2962 (q) The court may order the minor to be committed to the physical custody of a local  
2963 mental health authority, in accordance with the procedures and requirements of Title 62A,  
2964 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and  
2965 Mental Health.

2966 (r) (i) The court may make an order committing a minor within its jurisdiction to the  
2967 Utah State Developmental Center if the minor has mental retardation in accordance with the  
2968 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

2969 (ii) The court shall follow the procedure applicable in the district courts with respect to  
2970 judicial commitments to the Utah State Developmental Center when ordering a commitment

2971 under Subsection (2)(r)(i).

2972 (s) The court may terminate all parental rights upon a finding of compliance with the  
2973 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2974 (t) The court may make any other reasonable orders for the best interest of the minor or  
2975 as required for the protection of the public, except that a person younger than 18 years of age  
2976 may not be committed to jail or prison.

2977 (u) The court may combine the dispositions listed in this section if they are compatible.

2978 (v) Before depriving any parent of custody, the court shall give due consideration to the  
2979 rights of parents concerning their minor. The court may transfer custody of a minor to another  
2980 person, agency, or institution in accordance with the requirements and procedures of Title 78,  
2981 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

2982 (w) Except as provided in Subsection (2)(y)(i), an order under this section for  
2983 probation or placement of a minor with an individual or an agency shall include a date certain  
2984 for a review of the case by the court. A new date shall be set upon each review.

2985 (x) In reviewing foster home placements, special attention shall be given to making  
2986 adoptable minors available for adoption without delay.

2987 (y) (i) The juvenile court may enter an order of permanent custody and guardianship  
2988 with a relative or individual of a minor where the court has previously acquired jurisdiction as  
2989 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an  
2990 order for child support on behalf of the minor child against the natural or adoptive parents of  
2991 the child.

2992 (ii) Orders under Subsection (2)(y)(i):

2993 (A) shall remain in effect until the minor reaches majority;

2994 (B) are not subject to review under Section 78-3a-119; and

2995 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2996 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and  
2997 permanent orders of custody and guardianship do not expire with a termination of jurisdiction  
2998 of the juvenile court.

2999 (3) In addition to the dispositions described in Subsection (2), when a minor comes  
3000 within the court's jurisdiction he may be given a choice by the court to serve in the National  
3001 Guard in lieu of other sanctions, provided:

- 3002 (a) the minor meets the current entrance qualifications for service in the National  
3003 Guard as determined by a recruiter, whose determination is final;
- 3004 (b) the minor is not under the jurisdiction of the court for any act that:
- 3005 (i) would be a felony if committed by an adult;
- 3006 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or
- 3007 (iii) was committed with a weapon; and
- 3008 (c) the court retains jurisdiction over the minor under conditions set by the court and  
3009 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

3010 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction  
3011 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by  
3012 designated employees of the court or, if the minor is in the legal custody of the Division of  
3013 Juvenile Justice Services, then by designated employees of the division under Subsection  
3014 53-10-404(5)(b).

3015 (b) The responsible agency shall ensure that employees designated to collect the saliva  
3016 DNA specimens receive appropriate training and that the specimens are obtained in accordance  
3017 with accepted protocol.

3018 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA  
3019 Specimen Restricted Account created in Section 53-10-407.

3020 (d) Payment of the reimbursement is second in priority to payments the minor is  
3021 ordered to make for restitution under this section and treatment under Section 78-3a-318.

3022 Section 45. Section **78-17-3** is amended to read:

3023 **78-17-3. Liability imposed and limitations -- Defenses -- Limitations on damages.**

3024 (1) Except as provided in this section, any person who owns, holds under license,  
3025 transports, ships, stores, or disposes of nuclear material is liable, without regard to the conduct  
3026 of any other person, for harm from nuclear incidents arising in connection with or resulting  
3027 from such ownership, transportation, shipping, storage, or disposal.

3028 (2) Except as provided in this section, any person who owns, designs, constructs,  
3029 operates, or maintains facilities, structures, vehicles, or equipment used for handling,  
3030 transportation, shipment, storage, or disposal of nuclear material is liable, without regard to the  
3031 conduct of any other person, for harm from nuclear incidents arising in connection with or  
3032 resulting from such ownership, design, construction, operation, and maintenance.

3033 (3) Liability established by this chapter shall only be imposed if a court of competent  
3034 jurisdiction finds that:

3035 (a) the nuclear incident which is the basis for the suit is covered by existing financial  
3036 protection undertaken pursuant to 42 U.S.C. Sec. 2210; and

3037 (b) a person who is liable under this chapter is a person indemnified as defined in 42  
3038 U.S.C. Sec. 2014.

3039 (4) Immunity of the state, its political subdivisions, or the agencies of either from suit  
3040 are only waived with respect to a suit arising from a nuclear incident:

3041 (a) in accordance with [~~Sections 63-30-1 through 63-30-38~~] Title 63, Chapter 30d,  
3042 Governmental Immunity Act of Utah; or

3043 (b) when brought by a person suffering harm.

3044 (5) The conduct of the person suffering harm is not a defense to liability, except that  
3045 this section does not preclude any defense based on:

3046 (a) the claimant's knowing failure to mitigate damages related to any injury or damage  
3047 to the claimant or the claimant's property; or

3048 (b) an incident involving nuclear material that is knowingly and wrongfully caused by  
3049 the claimant.

3050 (6) No person may collect punitive or exemplary damages under this chapter.

3051 Section 46. Section **78-19-1** is amended to read:

3052 **78-19-1. Definitions.**

3053 As used in this chapter:

3054 (1) "Damage or injury" includes physical, nonphysical, economic, and noneconomic  
3055 damage.

3056 (2) "Financially secure source of recovery" means that, at the time of the incident, a  
3057 nonprofit organization:

3058 (a) has an insurance policy in effect that covers the activities of the volunteer and has  
3059 an insurance limit of not less than the limits established under the [~~Utah~~] Governmental  
3060 Immunity Act of Utah in Section [~~63-30-34~~] 63-30d-604; or

3061 (b) has established a qualified trust with a value not less than the combined limits for  
3062 property damage and single occurrence liability established under the [~~Utah~~] Governmental  
3063 Immunity Act of Utah in Section [~~63-30-34~~] 63-30d-604.

3064 (3) "Nonprofit organization" means any organization, other than a public entity,  
3065 described in Section 501 (c) of the Internal Revenue Code of 1986 and exempt from tax under  
3066 Section 501 (a) of that code.

3067 (4) "Public entity" has the same meaning as defined in Section 63-30b-1.

3068 (5) "Qualified trust" means a trust held for the purpose of compensating claims for  
3069 damages or injury in a trust company licensed to do business in this state under the provisions  
3070 of Title 7, Chapter 5, Trust Business.

3071 (6) "Reimbursements" means, with respect to each nonprofit organization:

3072 (a) compensation or honoraria totaling less than \$300 per calendar year; and

3073 (b) payment of expenses actually incurred.

3074 (7) (a) "Volunteer" means an individual performing services for a nonprofit  
3075 organization who does not receive anything of value from that nonprofit organization for those  
3076 services except reimbursements.

3077 (b) "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct  
3078 service volunteer.

3079 (c) "Volunteer" does not include an individual performing services for a public entity  
3080 to the extent the services are within the scope of Title 63, Chapter 30b, Immunity for Persons  
3081 Performing Voluntary Services or Title 67, Chapter 20, Volunteer Government Workers Act.

3082 Section 47. **Repealer.**

3083 This bill repeals:

3084 Section **63-30-1, Short title.**

3085 Section **63-30-2, Definitions.**

3086 Section **63-30-3, Immunity of governmental entities from suit.**

3087 Section **63-30-4, Act provisions not construed as admission or denial of liability --**

3088 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**  
3089 **personal liability.**

3090 Section **63-30-5, Waiver of immunity as to contractual obligations.**

3091 Section **63-30-6, Waiver of immunity as to actions involving property.**

3092 Section **63-30-7, Waiver of immunity for negligent damage, destruction or loss of**  
3093 **seized property.**

3094 Section **63-30-8, Waiver of immunity for injury caused by defective, unsafe, or**

3095 **dangerous condition of highways, bridges, or other structures.**

3096       Section **63-30-9, Waiver of immunity for injury from dangerous or defective public**  
3097 **building, structure, or other public improvement -- Exception.**

3098       Section **63-30-10, Waiver of immunity for injury caused by negligent act or**  
3099 **omission of employee -- Exceptions.**

3100       Section **63-30-10.5, Waiver of immunity for taking private property without**  
3101 **compensation.**

3102       Section **63-30-10.6, Attorneys' fees for records requests.**

3103       Section **63-30-11, Claim for injury -- Notice -- Contents -- Service -- Legal**  
3104 **disability -- Appointment of guardian ad litem.**

3105       Section **63-30-12, Claim against state or its employee -- Time for filing notice.**

3106       Section **63-30-13, Claim against political subdivision or its employee -- Time for**  
3107 **filing notice.**

3108       Section **63-30-14, Claim for injury -- Approval or denial by governmental entity or**  
3109 **insurance carrier within ninety days.**

3110       Section **63-30-15, Denial of claim for injury -- Authority and time for filing action**  
3111 **against governmental entity.**

3112       Section **63-30-16, Jurisdiction of district courts over actions -- Application of Rules**  
3113 **of Civil Procedure.**

3114       Section **63-30-17, Venue of actions.**

3115       Section **63-30-18, Compromise and settlement of actions.**

3116       Section **63-30-19, Undertaking required of plaintiff in action.**

3117       Section **63-30-20, Judgment against governmental entity bars action against**  
3118 **employee.**

3119       Section **63-30-22, Exemplary or punitive damages prohibited -- Governmental**  
3120 **entity exempt from execution, attachment, or garnishment.**

3121       Section **63-30-23, Payment of claim or judgment against state -- Presentment for**  
3122 **payment.**

3123       Section **63-30-24, Payment of claim or judgment against political subdivision --**  
3124 **Procedure by governing body.**

3125       Section **63-30-25, Payment of claim or judgment against political subdivision --**

3126 **Installment payments.**

3127           Section **63-30-26, Reserve funds for payment of claims or purchase of insurance**  
3128 **created by political subdivisions.**

3129           Section **63-30-27, Tax levy by political subdivisions for payment of claims,**  
3130 **judgments, or insurance premiums.**

3131           Section **63-30-28, Liability insurance -- Purchase of insurance or self-insurance by**  
3132 **governmental entity authorized -- Establishment of trust accounts for self-insurance.**

3133           Section **63-30-29.5, Liability insurance -- Government vehicles operated by**  
3134 **employees outside scope of employment.**

3135           Section **63-30-31, Liability insurance -- Construction of policy not in compliance**  
3136 **with act.**

3137           Section **63-30-32, Liability insurance -- Methods for purchase or renewal.**

3138           Section **63-30-33, Liability insurance -- Insurance for employees authorized -- No**  
3139 **right to indemnification or contribution from governmental agency.**

3140           Section **63-30-34, Limitation of judgments against governmental entity or**  
3141 **employee -- Insurance coverage exception -- Process for adjustment of limits.**

3142           Section **63-30-35, Expenses of attorney general, general counsel for state judiciary,**  
3143 **and general counsel for the Legislature in representing the state, its branches, members,**  
3144 **or employees.**

3145           Section **63-30-36, Defending government employee -- Request -- Cooperation --**  
3146 **Payment of judgment.**

3147           Section **63-30-37, Recovery of judgment paid and defense costs by government**  
3148 **employee.**

3149           Section **63-30-38, Indemnification of governmental entity by employee not**  
3150 **required.**

3151           Section **78-60-101, Title.**

3152           Section **78-60-102, Definitions.**

3153           Section **78-60-103, Limitation of judgments against governmental entity or**  
3154 **employee -- Process for adjustment of limits.**

3155           Section 48. **Transition clause.**

3156           It is the intent of the legislature that:

3157 (1) injuries alleged to be caused by a governmental entity that occurred before July 1,  
3158 2004, be governed by the provisions of Title 63, Chapter 30, Utah Governmental Immunity  
3159 Act; and

3160 (2) injuries alleged to be caused by a governmental entity that occurred on or after July  
3161 1, 2004, be governed by the provisions of Title 63, Chapter 30d, Governmental Immunity Act  
3162 of Utah.

3163 Section 49. **Effective date.**

3164 This bill takes effect on July 1, 2004.

3165 Section 50. **Coordinating S.B. 55 with S.B. 9.**

3166 If this S.B. 55, Governmental Immunity Act of Utah, and S.B. 9, Property Rights  
3167 Amendments, both pass, and the amendments to Section 63-30-10.5 pass as part of S.B. 9, it is  
3168 the intent of the Legislature to enact the following provisions and direct that the Office of  
3169 Legislative Research and General Counsel include that enactment in preparing the Utah Code  
3170 database for publication:

3171 **"63-30d-203. Exemptions for certain takings actions.**

3172 An action that involves takings law, as defined in Section 63-34-13, is not subject to the  
3173 requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, and 63-30d-601."

3174 Section 51. **Coordinating S.B. 55 with H.B. 111**

3175 If this S.B. 55, Governmental Immunity Act of Utah, and H.B. 111, Municipal  
3176 Government Amendments, both pass, it is the intent of the Legislature that the Office of  
3177 Legislative Research and General Counsel, in preparing the Utah Code database for  
3178 publication, amend Subsection 63-30d-401(3)(b)(ii)(A) to read as follows:

3179 "(A) the city or town clerk when the claim is against an incorporated city or town;"