

**REVISOR'S STATUTE**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael G. Waddoups**

House Sponsor: Rebecca D. Lockhart

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**LONG TITLE**

**General Description:**

This bill modifies parts of the Utah Code to make technical corrections including eliminating references to repealed provisions, making minor wording changes, updating cross references, and correcting numbering.

**Highlighted Provisions:**

This bill:

- modifies parts of the Utah Code to make technical corrections including eliminating references to repealed provisions, making minor wording changes, updating cross references, and correcting numbering.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**17-50-101**, as enacted by Chapter 133, Laws of Utah 2000

**26-18-2.3**, as last amended by Chapter 280, Laws of Utah 2004

**53-3-204**, as last amended by Chapter 20, Laws of Utah 2005

**58-37-7.5**, as last amended by Chapter 248, Laws of Utah 2005

**58-37-7.7**, as enacted by Chapter 33, Laws of Utah 2003

**62A-4a-117**, as last amended by Chapter 94, Laws of Utah 2003

**62A-5-101**, as last amended by Chapters 60 and 61, Laws of Utah 2005

- 30           **63-38f-1211**, as renumbered and amended by Chapter 148, Laws of Utah 2005
- 31           **63-38f-1411**, as enacted by Chapter 12, Laws of Utah 2005, First Special Session
- 32           **63-55b-158**, as last amended by Chapter 134, Laws of Utah 2005
- 33           **63-56-409**, as renumbered and amended by Chapter 25, Laws of Utah 2005
- 34           **63E-1-102**, as last amended by Chapter 90, Laws of Utah 2004
- 35           **63E-1-302**, as last amended by Chapter 291, Laws of Utah 2003
- 36           **63E-1-303**, as last amended by Chapter 291, Laws of Utah 2003
- 37           **77-36-1**, as last amended by Chapter 81, Laws of Utah 2002
- 38           **78-14-5.5**, as enacted by Chapter 95, Laws of Utah 2005

39 REPEALS:

- 40           **78-45e-3**, as last amended by Chapter 176, Laws of Utah 2003



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

43           Section 1. Section **17-50-101** is amended to read:

44           **17-50-101. Definitions.**

45           As used in this title:

46           (1) "County" means a unit of local government that is a body corporate and politic and  
 47 a legal subdivision of the state, with geographic boundaries as [~~provided in Part 2, Boundaries~~]  
 48 described in Section 17-50-104, and powers as provided in Part 3, County Powers.

49           (2) "Executive," when used to describe the powers, duties, or functions of a person or  
 50 body elected as the county executive or a person appointed as the county manager or  
 51 administrative officer, refers to:

52           (a) the power and duty to carry laws and ordinances into effect and secure their due  
 53 observance; and

54           (b) those powers, duties, and functions that, under constitutional and statutory  
 55 provisions and through long usage and accepted practice and custom at the federal and state  
 56 level, have come to be regarded as belonging to the executive branch of government.

57           (3) "Legislative," when used to describe the powers, duties, or functions of a county

58 commission or council, refers to:

59 (a) the power and duty to enact ordinances, levy taxes, and establish budgets; and

60 (b) those powers, duties, and functions that, under constitutional and statutory  
61 provisions and through long usage and accepted practice and custom at the federal and state  
62 level, have come to be regarded as belonging to the legislative branch of government.

63 Section 2. Section **26-18-2.3** is amended to read:

64 **26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.**

65 (1) In accordance with the requirements of Title XIX of the Social Security Act and  
66 applicable federal regulations, the division is responsible for the effective and impartial  
67 administration of this chapter in an efficient, economical manner. The division shall:

68 (a) establish, on a statewide basis, a program to safeguard against unnecessary or  
69 inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate  
70 hospital admissions or lengths of stay;

71 (b) deny any provider claim for services that fail to meet criteria established by the  
72 division concerning medical necessity or appropriateness; and

73 (c) place its emphasis on high quality care to recipients in the most economical and  
74 cost-effective manner possible, with regard to both publicly and privately provided services.

75 (2) The division shall implement and utilize cost-containment methods, where  
76 possible, which may include, but are not limited to:

77 (a) prepayment and postpayment review systems to determine if utilization is  
78 reasonable and necessary;

79 (b) preadmission certification of nonemergency admissions;

80 (c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;

81 (d) second surgical opinions;

82 (e) procedures for encouraging the use of outpatient services;

83 (f) consistent with Sections [~~28-18-2.4~~] 26-18-2.4 and 58-17b-606, a Medicaid drug  
84 program;

85 (g) coordination of benefits; and

86 (h) review and exclusion of providers who are not cost effective or who have abused  
87 the Medicaid program, in accordance with the procedures and provisions of federal law and  
88 regulation.

89 (3) The director of the division shall periodically assess the cost effectiveness and  
90 health implications of the existing Medicaid program, and consider alternative approaches to  
91 the provision of covered health and medical services through the Medicaid program, in order to  
92 reduce unnecessary or unreasonable utilization.

93 Section 3. Section **53-3-204** is amended to read:

94 **53-3-204. Persons who may not be licensed or issued a license certificate --**  
95 **Commercial license disqualifications.**

96 (1) (a) The division may not license a person who:

97 (i) is younger than 16 years of age;

98 (ii) has not completed a course in driver training approved by the commissioner; ~~or~~

99 (iii) if the person is a minor, has not completed the driving requirement under Section  
100 53-3-211; or

101 (iv) is not a resident of the state of Utah.

102 (b) Subsections (1)(a)(i), (ii), and (iii) do not apply to a person:

103 (i) who has been licensed before July 1, 1967;

104 (ii) who is 16 years of age or older making application for a license who has been  
105 licensed in another state or country; or

106 (iii) who is applying for a permit under Section 53-3-210 or 53A-13-208.

107 (2) The division may not issue a license certificate to a person:

108 (a) whose license has been suspended, denied, cancelled, or disqualified during the  
109 period of suspension, denial, cancellation, or disqualification;

110 (b) whose privilege has been revoked, except as provided in Section 53-3-225;

111 (c) who has previously been adjudged mentally incompetent and who has not at the  
112 time of application been restored to competency as provided by law;

113 (d) who is required by this chapter to take an examination unless the person

114 successfully passes the examination; or

115 (e) whose driving privileges have been denied or suspended under:

116 (i) Section 78-3a-506 by an order of the juvenile court; or

117 (ii) Section 53-3-231.

118 (3) The division may grant a class D or M license to a person whose commercial  
119 license is disqualified under Part 4 ~~[of this chapter]~~, Uniform Commercial Driver License Act,  
120 if the person is not otherwise sanctioned under this chapter.

121 Section 4. Section **58-37-7.5** is amended to read:

122 **58-37-7.5. Controlled substance database -- Pharmacy reporting requirements --**  
123 **Access -- Penalties.**

124 (1) As used in this section:

125 ~~[(a)]~~ ~~"Committee" means the Controlled Substance Database Advisory Committee~~  
126 ~~created in this section.]~~

127 ~~[(b)]~~ (a) "Database" means the controlled substance database created in this section.

128 ~~[(c)]~~ (b) "Database manager" means the person responsible for operating the database,  
129 or his designee.

130 ~~[(d)]~~ (c) "Division" means the Division of Occupational and Professional Licensing  
131 created in Section 58-1-103.

132 ~~[(e)]~~ (d) "Health care facility" has the same definition as in Section 26-21-2.

133 ~~[(f)]~~ (e) "Pharmacy or pharmaceutical facility" has the same definition as in Section  
134 58-17b-102.

135 (2) (a) There is created within the division a controlled substance database.

136 (b) The division shall administer and direct the functioning of the database in  
137 accordance with this section. The division may under state procurement laws contract with  
138 another state agency or private entity to establish, operate, or maintain the database. The  
139 division in collaboration with the board shall determine whether to operate the database within  
140 the division or contract with another entity to operate the database, based on an analysis of  
141 costs and benefits.

142 (c) The purpose of the database is to contain data as described in this section regarding  
143 every prescription for a controlled substance dispensed in the state to any person other than an  
144 inpatient in a licensed health care facility.

145 (d) Data required by this section shall be submitted in compliance with this section to  
146 the manager of the database by the pharmacist in charge of the drug outlet where the controlled  
147 substance is dispensed.

148 (3) The Utah State Board of Pharmacy created in Section 58-17b-201 shall advise the  
149 division regarding:

150 (a) establishing, maintaining, and operating the database;

151 (b) access to the database and how access is obtained; and

152 (c) control of information contained in the database.

153 (4) The pharmacist in charge shall, regarding each controlled substance dispensed by a  
154 pharmacist under his supervision other than those dispensed for an inpatient at a health care  
155 facility, submit to the manager of the database the following information, by a procedure and in  
156 a format established by the division:

157 (a) name of the prescribing practitioner;

158 (b) date of the prescription;

159 (c) date the prescription was filled;

160 (d) name of the person for whom the prescription was written;

161 (e) positive identification of the person receiving the prescription, including the type of  
162 identification and any identifying numbers on the identification;

163 (f) name of the controlled substance;

164 (g) quantity of controlled substance prescribed;

165 (h) strength of controlled substance;

166 (i) quantity of controlled substance dispensed;

167 (j) dosage quantity and frequency as prescribed;

168 (k) name of drug outlet dispensing the controlled substance;

169 (l) name of pharmacist dispensing the controlled substance; and

- 170 (m) other relevant information as required by division rule.
- 171 (5) The division shall maintain the database in an electronic file or by other means  
172 established by the division to facilitate use of the database for identification of:
- 173 (a) prescribing practices and patterns of prescribing and dispensing controlled  
174 substances;
- 175 (b) practitioners prescribing controlled substances in an unprofessional or unlawful  
176 manner;
- 177 (c) individuals receiving prescriptions for controlled substances from licensed  
178 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet  
179 in quantities or with a frequency inconsistent with generally recognized standards of dosage for  
180 that controlled substance; and
- 181 (d) individuals presenting forged or otherwise false or altered prescriptions for  
182 controlled substances to a pharmacy.
- 183 (6) (a) The division shall by rule establish the electronic format in which the  
184 information required under this section shall be submitted to the administrator of the database.
- 185 (b) The division shall ensure the database system records and maintains for reference:
- 186 (i) identification of each person who requests or receives information from the  
187 database;
- 188 (ii) the information provided to each person; and
- 189 (iii) the date and time the information is requested or provided.
- 190 (7) The division shall make rules [~~in collaboration with the committee~~] to:
- 191 (a) effectively enforce the limitations on access to the database as described in  
192 Subsection (8); and
- 193 (b) establish standards and procedures to ensure accurate identification of individuals  
194 requesting information or receiving information without request from the database.
- 195 (8) The manager of the database shall make information in the database available only  
196 to the following persons, and in accordance with the limitations stated and division rules:
- 197 (a) personnel of the division specifically assigned to conduct investigations related to

198 controlled substances laws under the jurisdiction of the division;

199 (b) authorized division personnel engaged in analysis of controlled substance  
200 prescription information as a part of the assigned duties and responsibilities of their  
201 employment;

202 (c) employees of the Department of Health whom the director of the Department of  
203 Health assigns to conduct scientific studies regarding the use or abuse of controlled substances,  
204 provided that the identity of the individuals and pharmacies in the database are confidential and  
205 are not disclosed in any manner to any individual who is not directly involved in the scientific  
206 studies;

207 (d) a licensed practitioner having authority to prescribe controlled substances, to the  
208 extent the information relates specifically to a current patient of the practitioner, to whom the  
209 practitioner is prescribing or considering prescribing any controlled substance;

210 (e) a licensed pharmacist having authority to dispense controlled substances to the  
211 extent the information relates specifically to a current patient to whom that pharmacist is  
212 dispensing or considering dispensing any controlled substance;

213 (f) federal, state, and local law enforcement authorities engaged as a specified duty of  
214 their employment in enforcing laws regulating controlled substances; and

215 (g) an individual who is the recipient of a controlled substance prescription entered into  
216 the database, upon providing evidence satisfactory to the database manager that the individual  
217 requesting the information is in fact the person about whom the data entry was made.

218 (9) Any person who knowingly and intentionally releases any information in the  
219 database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

220 (10) Any person who obtains or attempts to obtain information from the database by  
221 misrepresentation or fraud is guilty of a third degree felony.

222 (11) (a) A person may not knowingly and intentionally use, release, publish, or  
223 otherwise make available to any other person or entity any information obtained from the  
224 database for any purpose other than those specified in Subsection (8). Each separate violation  
225 of this Subsection (11) is a third degree felony and is also subject to a civil penalty not to

226 exceed \$5,000.

227 (b) The procedure for determining a civil violation of this Subsection (11) shall be in  
228 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

229 (c) Civil penalties assessed under this Subsection (11) shall be deposited in the General  
230 Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

231 (12) (a) The failure of a pharmacist in charge to submit information to the database as  
232 required under this section after the division has submitted a specific written request for the  
233 information or when the division determines the individual has a demonstrable pattern of  
234 failing to submit the information as required is grounds for the division to take the following  
235 actions in accordance with Section 58-1-401:

236 (i) refuse to issue a license to the individual;

237 (ii) refuse to renew the individual's license;

238 (iii) revoke, suspend, restrict, or place on probation the license;

239 (iv) issue a public or private reprimand to the individual;

240 (v) issue a cease and desist order; and

241 (vi) impose a civil penalty of not more than \$1,000 for each dispensed prescription  
242 regarding which the required information is not submitted.

243 (b) Civil penalties assessed under Subsection (12)(a)(vi) shall be deposited in the  
244 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

245 (c) The procedure for determining a civil violation of this Subsection (12) shall be in  
246 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

247 (13) An individual who has submitted information to the database in accordance with  
248 this section may not be held civilly liable for having submitted the information.

249 (14) All department and the division costs necessary to establish and operate the  
250 database shall be funded by appropriations from:

251 (a) the Commerce Service Fund; and

252 (b) the General Fund.

253 (15) All costs associated with recording and submitting data as required in this section

254 shall be assumed by the submitting pharmacy.

255 Section 5. Section **58-37-7.7** is amended to read:

256 **58-37-7.7. Use of dedicated credits -- Controlled Substance Database -- Collection**  
257 **of penalties.**

258 (1) The director may~~[, with concurrence of the Controlled Substance Database~~  
259 ~~Advisory Committee created in Section 58-37-7.5;]~~ use the monies deposited in the General  
260 Fund as a dedicated credit under Subsections 58-37-6(8)(a), 58-37-7.5(11)(c), and  
261 58-37-7.5(12)(b) for the following purposes:

262 (a) maintenance and replacement of the database equipment, including hardware and  
263 software;

264 (b) training of staff; and

265 (c) pursuit of external grants and matching funds.

266 (2) The director of the division may collect any penalty imposed under Subsections  
267 58-37-6(8)(a), 58-37-7.5(11)(c), and 58-37-7.5(12)(b) and which is not paid by:

268 (a) referring the matter to the Office of State Debt Collection or a collection agency; or

269 (b) bringing an action in the district court of the county in which the person owing the  
270 debt resides or in the county where the office of the director is located.

271 (3) The director may seek legal assistance from the attorney general or the county or  
272 district attorney of the district in which the action is brought to collect the fine.

273 (4) The court shall award reasonable attorney's fees and costs to the division for  
274 successful collection actions under Subsection (2)(b).

275 (5) All funding of the controlled substance database as defined under Section 58-37-7.5  
276 is nonlapsing.

277 Section 6. Section **62A-4a-117** is amended to read:

278 **62A-4a-117. Performance monitoring system.**

279 (1) As used in this section:

280 (a) "Performance goals" means a target level of performance or an expected level of  
281 performance against which actual performance is compared.

282 (b) "Performance indicators" means actual performance information regarding a  
283 program or activity.

284 (c) "Performance monitoring system" means a process to regularly collect and analyze  
285 performance information including performance indicators and performance goals.

286 (2) On or before May 1, 1996, the director, in cooperation with the board, shall develop  
287 a performance monitoring system of each area in the child welfare system, including foster care  
288 and other substitute care, child protective services, and adoption.

289 (3) On or before June 1, 1996, the director shall submit a description of that monitoring  
290 system to the Child Welfare Legislative Oversight Panel for review.

291 (4) The division shall fully implement a performance monitoring system on or before  
292 October 1, 1996.

293 (5) Before January 1 each year the director shall submit a written report describing the  
294 difference between actual performance and performance goals for the prior fiscal year to the  
295 Child Welfare Legislative Oversight Panel[;] and the Joint Health and Human Services  
296 Appropriations Subcommittee[; ~~and the Utah Tomorrow Strategic Planning Committee~~]. The  
297 report shall include:

298 (a) a summary of the division's efforts during the prior fiscal year to implement the  
299 Performance Milestone Plan;

300 (b) a summary of how performance must be improved to achieve full implementation  
301 of the Performance Milestone Plan;

302 (c) data on the extent to which new and experienced division employees have received  
303 training pursuant to statute and division policy; and

304 (d) an analysis of the use and efficacy of family preservation services, both before and  
305 after removal of children from their homes[; ~~and~~].

306 [~~(e) a description of the extent to which the pilot program under Section 62A-4a-202.7  
307 has been expanded during the prior fiscal year and an explanation of how the performance of  
308 regions that have previously implemented the program has been affected by the program,  
309 including data showing the number of referrals to the division:]~~]

310 ~~[(i) accepted for an investigation;]~~

311 ~~[(ii) accepted for a family assessment; or]~~

312 ~~[(iii) not accepted.]~~

313 Section 7. Section **62A-5-101** is amended to read:

314 **62A-5-101. Definitions.**

315 As used in this chapter:

316 (1) "Approved provider" means a person approved by the division to provide  
317 home-based services.

318 (2) "Board" means the Board of Services for People with Disabilities established in  
319 accordance with Section 62A-1-105.

320 (3) (a) "Brain injury" means an acquired injury to the brain that is neurological in  
321 nature, including a cerebral vascular accident.

322 (b) "Brain injury" does not include a deteriorating disease.

323 (4) "Designated mental retardation professional" means:

324 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,  
325 who:

326 (i) (A) has at least one year of specialized training in working with persons with mental  
327 retardation; or

328 (B) has at least one year of clinical experience with persons with mental retardation;  
329 and

330 (ii) is designated by the division as specially qualified, by training and experience, in  
331 the treatment of mental retardation; or

332 (b) a clinical or certified social worker licensed under Title 58, Chapter 60, Mental  
333 Health Professional Practice Act, who:

334 (i) has at least two years of clinical experience with persons with mental retardation;  
335 and

336 (ii) is designated by the division as specially qualified, by training and experience, in  
337 the treatment of mental retardation.

- 338 (5) "Deteriorating disease" includes:
- 339 (a) multiple sclerosis;
- 340 (b) muscular dystrophy;
- 341 (c) Huntington's chorea;
- 342 (d) Alzheimer's disease;
- 343 (e) ataxia; or
- 344 (f) cancer.
- 345 (6) "Developmental center" means the Utah State Developmental Center, established in
- 346 accordance with Part 2, Utah State Developmental Center.
- 347 (7) "Direct service worker" means a person who provides services to a person with a
- 348 disability:
- 349 (a) when the services are rendered in:
- 350 (i) the physical presence of the person with a disability; or
- 351 (ii) a location where the person rendering the services has access to the physical
- 352 presence of the person with a disability; and
- 353 (b) under:
- 354 (i) a contract with the division; or
- 355 (ii) a grant agreement with the division.
- 356 (8) "Director" means the director of the Division of Services for People with
- 357 Disabilities.
- 358 (9) (a) "Disability" means a severe, chronic disability that:
- 359 (i) is attributable to:
- 360 (A) mental retardation;
- 361 (B) a condition that qualifies a person as a person with a related condition, as defined
- 362 in 42 C.F.R. 435.1009;
- 363 (C) a brain injury; or
- 364 (D) a physical disability;
- 365 (ii) is likely to continue indefinitely;

366 (iii) results in a substantial functional limitation in three or more of the following areas  
367 of major life activity:

- 368 (A) self-care;
- 369 (B) receptive and expressive language;
- 370 (C) learning;
- 371 (D) mobility;
- 372 (E) self-direction;
- 373 (F) capacity for independent living; or
- 374 (G) economic self-sufficiency; and

375 (iv) requires a combination or sequence of special interdisciplinary or generic care,  
376 treatment, or other services that:

- 377 (A) may continue throughout life; and
- 378 (B) must be individually planned and coordinated.

379 (b) "Disability" does not include a condition due solely to:

- 380 (i) mental illness;
- 381 (ii) personality disorder;
- 382 (iii) hearing impairment;
- 383 (iv) visual impairment;
- 384 (v) learning disability;
- 385 (vi) behavior disorder;
- 386 (vii) substance abuse; or
- 387 (viii) the aging process.

388 (10) "Division" means the Division of Services for People with Disabilities.

389 (11) "Eligible to receive division services" or "eligibility" means qualification, based  
390 on criteria established by the division in accordance with Subsection 62A-5-102[~~(3)~~](4), to  
391 receive services that are administered by the division.

392 (12) "Endorsed program" means a facility or program that:

- 393 (a) is operated:

394 (i) by the division; or  
395 (ii) under contract with the division; or  
396 (b) provides services to a person committed to the division under Part 3, Admission to  
397 Mental Retardation Facility.

398 (13) "Licensed physician" means:

399 (a) an individual licensed to practice medicine under:

400 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

401 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

402 (b) a medical officer of the United States Government while in this state in the  
403 performance of official duties.

404 (14) "Mental retardation" means a significant, subaverage general intellectual  
405 functioning, that:

406 (a) exists concurrently with deficits in adaptive behavior; and

407 (b) is manifested during the developmental period as defined in the current edition of  
408 the Diagnostic and Statistical Manual of Mental Disorders, published by the American  
409 Psychiatric Association.

410 (15) "Mental retardation facility" means a residential facility for a person with mental  
411 retardation, that receives state or federal funds under Title XIX of the federal Social Security  
412 Act, for the purpose of serving a mentally retarded person in this state.

413 (16) "Physical disability" means a medically determinable physical impairment that has  
414 resulted in the functional loss of two or more of a person's limbs.

415 (17) "Public funds" means state or federal funds that are disbursed by the division.

416 (18) "Resident" means an individual under observation, care, or treatment in a mental  
417 retardation facility.

418 Section 8. Section **63-38f-1211** is amended to read:

419 **63-38f-1211. Management fee -- Additional financial assistance.**

420 (1) The corporation may charge a management fee on assets under management in the  
421 Utah fund of funds.

422 (2) The fee shall:  
423 (a) be in addition to any fee charged to the Utah fund of funds by the venture capital  
424 investment fund allocation manager selected by the corporation; and

425 (b) be charged only to pay for reasonable and necessary costs of the corporation.

426 (3) The corporation may apply for and, when qualified, receive financial assistance  
427 from the Industrial Assistance Fund under Title [9] 63, Chapter [2] 38f, Part [12] 9, Industrial  
428 Assistance Fund, to help establish the program authorized under this part.

429 Section 9. Section **63-38f-1411** is amended to read:

430 **63-38f-1411. Tourism Marketing Performance Account.**

431 (1) There is created within the General Fund a restricted account known as the Tourism  
432 Marketing Performance Account.

433 (2) The account shall be administered by the office for the purposes listed in  
434 Subsection (5).

435 (3) (a) The account shall earn interest.

436 (b) All interest earned on account monies shall be deposited into the account.

437 (c) Monies in the account are nonlapsing.

438 (4) The account shall be funded by appropriations made to the account by the  
439 Legislature in accordance with this section.

440 (5) The director may use account monies appropriated to the office to pay for the  
441 statewide advertising, marketing, and branding campaign for promotion of the state as  
442 conducted by the office.

443 (6) (a) For the fiscal year beginning July 1, 2005, the director shall allocate 7.5% of the  
444 account monies appropriated to the office, but not to exceed \$750,000, to be distributed to a  
445 sports organization for advertising, marketing, branding, and promoting Utah in attracting  
446 sporting events into the state as determined by the office.

447 (b) For a fiscal year beginning on or after July 1, 2006, the amount distributed under  
448 Subsection (6)(a) shall be indexed from the July 1, 2005 fiscal year to reflect a percent increase  
449 or decrease of monies set aside into the account as compared to the previous fiscal year.

450 (c) The monies distributed under Subsections (6)(a) and (b) are nonlapsing.

451 (d) The office shall provide for an annual accounting to the director and the board by a  
452 sports organization of the use of monies it receives under Subsection (6)(a) or (b).

453 (e) For purposes of this Subsection (6), "sports organization" means an organization  
454 that is:

455 (i) exempt from federal income taxation in accordance with Section 501(c)(3), Internal  
456 Revenue Code; and

457 (ii) created to foster national and international amateur sports [~~competition~~]  
458 competitions to be held in the state and sports tourism throughout the state, to include  
459 advertising, marketing, branding, and promoting Utah for the purpose of attracting sporting  
460 events into the state.

461 (7) (a) Monies set aside into the account shall be as follows:

462 (i) for the fiscal year beginning July 1, 2005 only, an amount appropriated in Section 7  
463 of this bill;

464 (ii) for the fiscal year beginning July 1, 2006:

465 (A) the beginning nonlapsing appropriation balances, if any, in the Tourism Marketing  
466 Performance Account;

467 (B) any legislative appropriation from the sales and use tax revenue increases identified  
468 in Subsection (8); and

469 (C) any appropriation made by the Legislature from the General Fund to the account in  
470 an appropriations bill; and

471 (iii) for the fiscal year beginning July 1, 2007, and for each fiscal year thereafter, a  
472 \$1,000,000 reduction in the prior year's appropriation sources other than the sales and use tax  
473 revenue increases identified in Subsection (8), plus a legislative appropriation from the  
474 cumulative sales and use tax revenue increases identified in Subsection (8).

475 (b) Monies in the account are nonlapsing.

476 (8) (a) In fiscal years 2006 through 2015, a portion of the state sales and use tax  
477 revenues determined under this Subsection (8) shall be certified as a set-aside for the account

478 by the State Tax Commission and reported to the Office of Legislative Fiscal Analyst.

479 (b) The State Tax Commission shall determine the set-aside under this Subsection (8)  
480 in each fiscal year by applying the following formula: if the increase in the state sales and use  
481 tax revenues derived from the retail sales of tourist-oriented goods and services in the fiscal  
482 year two years prior to the fiscal year in which the set-aside is to be made for the account is at  
483 least 3% over the state sales and use tax revenues derived from the retail sales of  
484 tourist-oriented goods and services generated in the fiscal year three years prior to the fiscal  
485 year in which the set-aside is to be made, an amount equal to 1/2 of the state sales and use tax  
486 revenues generated above the 3% increase shall be calculated by the commission and set aside  
487 by the state treasurer for appropriation to the account.

488 (c) Total monies to be appropriated to the account in any fiscal year under Subsections  
489 (8)(a) and (b) may not exceed the amount in the account under this section in the fiscal year  
490 immediately preceding the current fiscal year by more than \$3,000,000.

491 (d) As used in this Subsection (8), "sales of tourism-oriented goods and services" are  
492 those sales by businesses registered with the State Tax Commission under the following codes  
493 of the 1997 North American Industry Classification System of the federal Executive Office of  
494 the President, Office of Management and Budget:

- 495 (i) NAICS Code 453 Miscellaneous Store Retailers;
- 496 (ii) NAICS Code 481 Passenger Air Transportation;
- 497 (iii) NAICS Code 487 Scenic and Sightseeing Transportation;
- 498 (iv) NAICS Code 711 Performing Arts, Spectator Sports and Related Industries;
- 499 (v) NAICS Code 712 Museums, Historical Sites and Similar Institutions;
- 500 (vi) NAICS Code 713 Amusement, Gambling and Recreation Industries;
- 501 (vii) NAICS Code 721 Accommodations;
- 502 (viii) NAICS Code 722 Food Services and Drinking Places;
- 503 (ix) NAICS Code 4483 Jewelry, Luggage, and Leather Goods Stores;
- 504 (x) NAICS Code 4853 Taxi and Limousine Service;
- 505 (xi) NAICS Code 4855 Charter Bus;

- 506 (xii) NAICS Code 5615 Travel Arrangement and Reservation Services;
- 507 (xiii) NAICS Code 44611 Pharmacies and Drug Stores;
- 508 (xiv) NAICS Code 45111 Sporting Goods Stores;
- 509 (xv) NAICS Code 45112 Hobby Toy and Game Stores;
- 510 (xvi) NAICS Code 45121 Book Stores and News Dealers;
- 511 (xvii) NAICS Code 445120 Convenience Stores without Gas Pumps;
- 512 (xviii) NAICS Code 447110 Gasoline Stations with Convenience Stores;
- 513 (xix) NAICS Code 447190 Other Gasoline Stations;
- 514 (xx) NAICS Code 532111 Passenger Car Rental; and
- 515 (xxi) NAICS Code 532292 Recreational Goods Rental.

516 Section 10. Section **63-55b-158** is amended to read:

517 **63-55b-158. Repeal dates -- Title 58.**

518 [~~Section 58-31b-301.5, Geriatric Care Manager Pilot Program, is repealed May 2,~~  
519 ~~2005.~~]

520 Section 11. Section **63-56-409** is amended to read:

521 **63-56-409. Small purchases.**

522 Small purchases shall be defined in<sub>2</sub> and may be made in accordance with procedures  
523 established by<sub>2</sub> rules and regulations; except that the procurement requirement shall not be  
524 artificially divided so as to constitute a small purchase under this section.

525 Section 12. Section **63E-1-102** is amended to read:

526 **63E-1-102. Definitions.**

527 As used in this title:

- 528 (1) "Authorizing statute" means the statute creating an entity as an independent entity.
- 529 (2) "Committee" means the Retirement and Independent Entities Committee created in  
530 Section 63E-1-201.
- 531 (3) "Independent corporation" means a corporation incorporated in accordance with  
532 Chapter 2, Independent Corporations Act.
- 533 (4) (a) "Independent entity" means an entity having a public purpose relating to the

534 state or its citizens that is individually created by the state or is given by the state the right to  
535 exist and conduct its affairs as an:

536 (i) independent state agency; or

537 (ii) independent corporation.

538 (b) "Independent entity" includes the:

539 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

540 (ii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley  
541 Historic Railroad Authority;

542 (iii) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science  
543 Center Authority;

544 (iv) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing  
545 Corporation Act;

546 (v) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair  
547 Corporation Act;

548 (vi) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'  
549 Compensation Fund;

550 (vii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State  
551 Retirement Systems Administration;

552 (viii) School and Institutional Trust Lands Administration created in Title 53C,  
553 Chapter 1, Part 2, School and Institutional Trust Lands Administration;

554 (ix) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah  
555 Communications Agency Network Act; and

556 (x) Utah Capital Investment Corporation created in Title [9] 63, Chapter [2] 38f, Part  
557 [~~19~~] 12, Utah Venture Capital Enhancement Act.

558 (c) Notwithstanding this Subsection (4), "independent entity" does not include:

559 (i) the Public Service Commission of Utah created in Section 54-1-1;

560 (ii) an institution within the state system of higher education;

561 (iii) a city, county, or town;

- 562 (iv) a local school district;
- 563 (v) a special district created under the authority of Title 17A, Special Districts; or
- 564 (vi) a local district created under the authority of Title 17B, Limited Purpose Local
- 565 Government Entities.

566 (5) "Independent state agency" means an entity that is created by the state, but is  
567 independent of the governor's direct supervisory control.

568 (6) "Monies held in trust" means monies maintained for the benefit of:

- 569 (a) one or more private individuals, including public employees;
- 570 (b) one or more public or private entities; or
- 571 (c) the owners of a quasi-public corporation.

572 (7) "Public corporation" means an artificial person, public in ownership, individually  
573 created by the state as a body politic and corporate for the administration of a public purpose  
574 relating to the state or its citizens.

575 (8) "Quasi-public corporation" means an artificial person, private in ownership,  
576 individually created as a corporation by the state which has accepted from the state the grant of  
577 a franchise or contract involving the performance of a public purpose relating to the state or its  
578 citizens.

579 Section 13. Section **63E-1-302** is amended to read:

580 **63E-1-302. Review by committee required for creating an independent entity.**

581 (1) [~~Except as otherwise provided in Subsection (4), if~~] If a government requestor  
582 proposes that the Legislature create an independent entity, that government requestor shall  
583 request that the committee review the proposal.

584 (2) After receiving a request for review under Subsection (1), the chairs of the  
585 committee:

- 586 (a) shall schedule a meeting of the committee to review the proposal; and
- 587 (b) may request information from executive and legislative branch entities and officers
- 588 concerning the proposal including:
  - 589 (i) whether or not the proposed independent entity should be exempt from any state

590 statute;

591 (ii) the need for oversight of the proposed independent entity by an executive branch  
592 agency;

593 (iii) the need for and requirements of audits of the proposed independent entity;

594 (iv) the custody of the proposed independent entity's funds;

595 (v) the legal representation of the proposed independent entity;

596 (vi) whether or not the state should receive services from or provide services to the  
597 proposed independent entity; and

598 (vii) the legal liability, if any, to the state if the proposed independent entity is created.

599 (3) In requesting information from executive and legislative branch entities or officers  
600 under Subsection (2), the committee should specifically consider seeking information from:

601 (a) the state auditor;

602 (b) the state treasurer;

603 (c) the attorney general;

604 (d) the risk manager; and

605 (e) the executive director of the Department of Administrative Services.

606 ~~[(4) (a) On or before August 1, 2003, the committee shall review the Utah Capital  
607 Investment Corporation, a quasi-public corporation created under Title 9, Chapter 2, Part 19,  
608 Utah Venture Capital Enhancement Act, in the 2003 General Session of the Legislature.]~~

609 ~~[(b) After this review, the committee shall make a report to the Legislature on any  
610 recommended modifications to the statutes that created the corporation.]~~

611 Section 14. Section **63E-1-303** is amended to read:

612 **63E-1-303. Recommendations of the committee.**

613 ~~[Except for the Utah Capital Investment Corporation review under Subsection  
614 63E-1-302(4), after] After the committee has reviewed a proposal to create an independent  
615 entity in accordance with Section 63E-1-302, the committee shall make a report to the  
616 Legislature stating whether the committee:~~

617 (1) recommends creation of the proposed independent entity;

- 618 (2) recommends that the proposed independent entity not be created; or
- 619 (3) makes no recommendation regarding the creation of the proposed independent
- 620 entity.

621 Section 15. Section **77-36-1** is amended to read:

622 **77-36-1. Definitions.**

623 As used in this chapter:

- 624 (1) "Cohabitant" has the same meaning as in Section 30-6-1.
- 625 (2) "Domestic violence" means any criminal offense involving violence or physical
- 626 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
- 627 commit a criminal offense involving violence or physical harm, when committed by one
- 628 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
- 629 any of the following offenses by one cohabitant against another:
  - 630 (a) aggravated assault, as described in Section 76-5-103;
  - 631 (b) assault, as described in Section 76-5-102;
  - 632 (c) criminal homicide, as described in Section 76-5-201;
  - 633 (d) harassment, as described in Section 76-5-106;
  - 634 (e) [~~telephone~~] electronic communication harassment, as described in Section
  - 635 76-9-201;
  - 636 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
  - 637 76-5-301, 76-5-301.1, and 76-5-302;
  - 638 (g) mayhem, as described in Section 76-5-105;
  - 639 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
  - 640 Title 76, Chapter 5a, Sexual Exploitation of Children;
  - 641 (i) stalking, as described in Section 76-5-106.5;
  - 642 (j) unlawful detention, as described in Section 76-5-304;
  - 643 (k) violation of a protective order or ex parte protective order, as described in Section
  - 644 76-5-108;
  - 645 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property

646 Destruction, 2, Burglary and Criminal Trespass, or 3, Robbery;

647 (m) possession of a deadly weapon with intent to assault, as described in Section  
648 76-10-507;

649 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
650 person, building, or vehicle, as described in Section 76-10-508;

651 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
652 conduct is the result of a plea agreement in which the defendant was originally charged with  
653 any of the domestic violence offenses otherwise described in this Subsection (2). Conviction  
654 of disorderly conduct as a domestic violence offense, in the manner described in this  
655 Subsection (2)(o), does not constitute a misdemeanor crime of domestic violence under 18  
656 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.  
657 Section 921 et seq.; or

658 (p) child abuse as described in Section 76-5-109.1.

659 (3) "Victim" means a cohabitant who has been subjected to domestic violence.

660 Section 16. Section **78-14-5.5** is amended to read:

661 **78-14-5.5. Limitation on actions against health care providers when parent or**  
662 **guardian refuses to consent to health care of child.**

663 (1) A malpractice action against a health care provider may not be brought on the basis  
664 of the consequences resulting from the refusal of a child's parent or guardian to consent to the  
665 child's health care, if:

666 (a) the health care is recommended by the health care provider;

667 (b) the parent or guardian is provided with sufficient information to make an informed  
668 decision regarding the recommendation of the health care provider; and

669 (c) the consent of the parent or guardian is required by law before the health care may  
670 be administered.

671 (2) The sole purpose of this section is to prohibit a malpractice action against a health  
672 care provider under the circumstances set forth by this section. This section may not be  
673 construed to:

- 674 (a) create a new cause of action;
- 675 (b) expand an existing cause of action;
- 676 (c) impose a new duty on a health care provider; or
- 677 (d) expand an existing duty [~~on~~] of a health care provider.

678 **Section 17. Repealer.**

679 This bill repeals:

680 Section **78-45e-3, Requirements for filing.**