

1 **REVISOR'S STATUTE**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Michael G. Waddoups**

5 House Sponsor: Rebecca D. Lockhart

6

7 **LONG TITLE**

8 **General Description:**

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10 eliminating references to repealed provisions, making minor wording changes, updating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

12 **Highlighted Provisions:**

13 This bill:

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15 references to repealed provisions, making minor wording changes, updating cross
16 references, and correcting numbering.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides an effective date.

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **17-50-101**, as enacted by Chapter 133, Laws of Utah 2000

24 **26-18-2.3**, as last amended by Chapter 280, Laws of Utah 2004

25 **53-3-204**, as last amended by Chapter 20, Laws of Utah 2005

26 **58-37-7.5**, as last amended by Chapter 248, Laws of Utah 2005

27 **58-37-7.7**, as enacted by Chapter 33, Laws of Utah 2003



- 28 **62A-4a-117**, as last amended by Chapter 94, Laws of Utah 2003
- 29 **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 **63F-1-106**, as enacted by Chapter 169, Laws of Utah 2005
- 38 **77-36-1**, as last amended by Chapter 81, Laws of Utah 2002
- 39 **78-14-5.5**, as enacted by Chapter 95, Laws of Utah 2005

40 REPEALS:

- 41 **78-45e-3**, as last amended by Chapter 176, Laws of Utah 2003

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

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

45 **17-50-101. Definitions.**

46 As used in this title:

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

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

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

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

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

59 commission or council, refers to:

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

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

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

65 **26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.**

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

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

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

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

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

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

80 (b) preadmission certification of nonemergency admissions;

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

82 (d) second surgical opinions;

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

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

86 (g) coordination of benefits; and

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

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

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

95 **53-3-204. Persons who may not be licensed.**

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, 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 in₁ and may be made in accordance with procedures
523 established by₂ 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 [+9] 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 **63F-1-106** is amended to read:

622 **63F-1-106. Executive director -- Jurisdiction over divisions and office directors --**
623 **Authority.**

624 (1) The executive director of the department has administrative jurisdiction over each
625 division and office in the department and the division and office directors. The executive
626 director may make changes in personnel and service functions in the divisions under the
627 director's administrative jurisdiction, and authorize designees to perform appropriate
628 responsibilities, to effectuate greater efficiency and economy in the operations of the
629 department as permitted by this section.

630 (2) The executive director may establish offices and bureaus to perform functions such
631 as budgeting, planning, and personnel administration to facilitate management of the
632 department.

633 (3) The executive director may hire employees in the department, divisions, and offices
634 as permitted by department resources. Except as provided in Subsection (4), any employees of
635 the department are exempt from career service or classified service status as provided in
636 Section 67-19-15.

637 (4) (a) An employee of an executive branch agency who was a career service employee
638 as of July 1, 2005 who is transferred to the Department of Technology Services continues in
639 the employee's career service status during the employee's service to the Department of
640 Technology Services if the duties of the position in the new department are substantially
641 similar to those in the employee's previous position.

642 (b) A career service employee transferred to the new department under the provisions
643 of Subsection (4)(a), whose duties or responsibilities subsequently change, may not be
644 converted to exempt status without the review process required by Subsection 67-19-15(3).

645 (c) The executive director shall work with executive branch agency directors, during
646 the period of transition to the new department, in good faith, to:

647 (i) preserve relevant career service positions;

648 (ii) retain qualified employees in nonrelevant positions through transfers to other
649 positions in state government, with retraining as necessary; and

650 (iii) promote greater economy and efficiencies for the department.

651 (d) The Department of Technology Services together with the [~~Department~~] Division
652 of Human Resource Management may develop financial and other incentives to encourage a
653 career service employee who transfers to the department under the provisions of Subsection
654 (4)(a) to voluntarily convert to an exempt position under Section 67-19-15.

655 (e) If a career service employee transfers to the department under the provisions of
656 Subsection (4)(a) and terminates his employment with the department for any reason, the
657 employment position shall be exempt from career service status under the provisions of
658 Subsection (3).

659 Section 16. Section **77-36-1** is amended to read:

660 **77-36-1. Definitions.**

661 As used in this chapter:

662 (1) "Cohabitant" has the same meaning as in Section 30-6-1.

663 (2) "Domestic violence" means any criminal offense involving violence or physical
664 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
665 commit a criminal offense involving violence or physical harm, when committed by one
666 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
667 any of the following offenses by one cohabitant against another:

668 (a) aggravated assault, as described in Section 76-5-103;

669 (b) assault, as described in Section 76-5-102;

670 (c) criminal homicide, as described in Section 76-5-201;

671 (d) harassment, as described in Section 76-5-106;

672 (e) [~~telephone~~] electronic communication harassment, as described in Section
673 76-9-201;

674 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
675 76-5-301, 76-5-301.1, and 76-5-302;

676 (g) mayhem, as described in Section 76-5-105;

677 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
678 Title 76, Chapter 5a, Sexual Exploitation of Children;

679 (i) stalking, as described in Section 76-5-106.5;
680 (j) unlawful detention, as described in Section 76-5-304;
681 (k) violation of a protective order or ex parte protective order, as described in Section
682 76-5-108;

683 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
684 Destruction, 2, Burglary and Criminal Trespass, or 3, Robbery;

685 (m) possession of a deadly weapon with intent to assault, as described in Section
686 76-10-507;

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

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

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

697 (3) "Victim" means a cohabitant who has been subjected to domestic violence.
698 Section 17. Section **78-14-5.5** is amended to read:

699 **78-14-5.5. Limitation on actions against health care providers when parent or**
700 **guardian refuses to consent to health care of child.**

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

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

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

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

709 (2) The sole purpose of this section is to prohibit a malpractice action against a health

710 care provider under the circumstances set forth by this section. This section may not be
711 construed to:

- 712 (a) create a new cause of action;
- 713 (b) expand an existing cause of action;
- 714 (c) impose a new duty on a health care provider; or
- 715 (d) expand an existing duty ~~[on]~~ of a health care provider.

716 **Section 18. Repealer.**

717 This bill repeals:

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

719 Section 19. **Effective date.**

720 This bill takes effect on May 1, 2006, except that the amendments to Section 63F-1-106
721 take effect on July 1, 2006.

Legislative Review Note
as of 1-4-06 7:27 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0143

Revisor's Statute

19-Jan-06

10:06 AM

State Impact

No Fiscal Impact

Individual and Business Impact

No Fiscal Impact

Office of the Legislative Fiscal Analyst