

REVISOR'S STATUTE

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

Senate Sponsor: John W. Hickman

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This bill modifies parts of the Utah Code to make technical corrections including eliminating references to repealed provisions, making minor wording changes, updating cross references, and correcting numbering.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

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Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

3-1-9, Utah Code Annotated 1953

3-1-17, Utah Code Annotated 1953

3-1-41, as last amended by Chapter 82, Laws of Utah 1997

7-1-104, as last amended by Chapter 267, Laws of Utah 1989

7-7-12, as last amended by Chapter 200, Laws of Utah 1994



28 **10-8-2**, as last amended by Chapters 136 and 254, Laws of Utah 2005
29 **10-9a-801**, as renumbered and amended by Chapter 254, Laws of Utah 2005
30 **11-13-314**, as enacted by Chapter 136, Laws of Utah 2005
31 **13-5-9**, as last amended by Chapter 23, Laws of Utah 1965
32 **13-11a-3**, as enacted by Chapter 205, Laws of Utah 1989
33 **13-21-7**, as enacted by Chapter 29, Laws of Utah 1985
34 **16-6a-822**, as last amended by Chapter 228, Laws of Utah 2006
35 **17-27a-801**, as renumbered and amended by Chapter 254, Laws of Utah 2005
36 **17A-2-412**, as last amended by Chapter 368, Laws of Utah 1998
37 **23-13-1**, as enacted by Chapter 46, Laws of Utah 1971
38 **26-18-503**, as enacted by Chapter 215, Laws of Utah 2004
39 **26-34-2**, as enacted by Chapter 276, Laws of Utah 1989
40 **26-39-104**, as last amended by Chapter 37, Laws of Utah 2006
41 **31A-16-105**, as repealed and reenacted by Chapter 258, Laws of Utah 1992
42 **31A-17-402**, as last amended by Chapter 186, Laws of Utah 2002
43 **31A-26-210**, as last amended by Chapter 204, Laws of Utah 1986
44 **32A-13-103**, as last amended by Chapter 185, Laws of Utah 2002
45 **34-19-5**, as enacted by Chapter 85, Laws of Utah 1969
46 **35A-3-313**, as last amended by Chapter 29, Laws of Utah 2004
47 **36-26-102**, as enacted by Chapter 362, Laws of Utah 2006
48 **38-1-27**, as last amended by Chapter 297, Laws of Utah 2006
49 **38-2-3.2**, as enacted by Chapter 62, Laws of Utah 1953
50 **40-10-9**, as enacted by Chapter 145, Laws of Utah 1979
51 **41-3-408**, as last amended by Chapter 175, Laws of Utah 1994
52 **41-12a-305**, as enacted by Chapter 242, Laws of Utah 1985
53 **41-22-29**, as last amended by Chapter 114, Laws of Utah 1999
54 **49-12-203**, as last amended by Chapter 143, Laws of Utah 2006
55 **49-12-402**, as last amended by Chapter 116, Laws of Utah 2005
56 **49-13-203**, as last amended by Chapter 143, Laws of Utah 2006
57 **53A-1-706**, as last amended by Chapter 88, Laws of Utah 2004
58 **53A-2-120**, as enacted by Chapter 234, Laws of Utah 2003

- 59 **53A-2-213**, as last amended by Chapter 119, Laws of Utah 1993
- 60 **53A-8-105**, as last amended by Chapter 324, Laws of Utah 1999
- 61 **53A-17a-107**, as last amended by Chapter 268, Laws of Utah 1994
- 62 **53A-28-401**, as enacted by Chapter 62, Laws of Utah 1996
- 63 **53B-8a-108**, as last amended by Chapter 109, Laws of Utah 2005
- 64 **53C-1-201**, as last amended by Chapter 139, Laws of Utah 2006
- 65 **54-1-3**, as last amended by Chapter 246, Laws of Utah 1983
- 66 **54-4-8**, as last amended by Chapter 265, Laws of Utah 1998
- 67 **54-8-24**, as enacted by Chapter 157, Laws of Utah 1969
- 68 **54-9-103**, as last amended by Chapter 105, Laws of Utah 2005
- 69 **57-1-31.5**, as enacted by Chapter 209, Laws of Utah 2002
- 70 **57-2a-4**, as enacted by Chapter 155, Laws of Utah 1988
- 71 **57-2a-7**, as last amended by Chapter 88, Laws of Utah 1989
- 72 **57-12-2**, as enacted by Chapter 24, Laws of Utah 1972
- 73 **57-12-14**, as enacted by Chapters 295 and 321, Laws of Utah 1998
- 74 **57-15-8.5**, as enacted by Chapter 224, Laws of Utah 1981
- 75 **58-13-2**, as last amended by Chapters 153 and 299, Laws of Utah 2005
- 76 **58-17b-504**, as enacted by Chapter 280, Laws of Utah 2004
- 77 **58-61-307**, as last amended by Chapter 281, Laws of Utah 2001
- 78 **59-2-201**, as last amended by Chapter 360, Laws of Utah 1997
- 79 **59-2-1108**, as last amended by Chapter 143, Laws of Utah 2003
- 80 **59-2-1302**, as last amended by Chapter 143, Laws of Utah 2003
- 81 **59-2-1331**, as last amended by Chapter 279, Laws of Utah 2006
- 82 **59-2-1347**, as last amended by Chapter 143, Laws of Utah 2003
- 83 **59-7-605**, as last amended by Chapters 108 and 294, Laws of Utah 2005
- 84 **59-10-1009**, as renumbered and amended by Chapter 223, Laws of Utah 2006
- 85 **59-11-102**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 86 **59-13-204**, as last amended by Chapter 232, Laws of Utah 2001
- 87 **59-14-208**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 88 **59-22-304**, as renumbered and amended by Chapter 229, Laws of Utah 2000
- 89 **59-22-307**, as renumbered and amended by Chapter 229, Laws of Utah 2000

90 **61-2b-25**, as last amended by Chapter 117, Laws of Utah 1999
91 **62A-4a-107**, as last amended by Chapter 75, Laws of Utah 2006
92 **63-11-1**, Utah Code Annotated 1953
93 **63-30d-203**, as enacted by Chapter 267, Laws of Utah 2004
94 **63-38f-501**, as last amended by Chapter 223, Laws of Utah 2006
95 **63-46b-3**, as last amended by Chapter 162, Laws of Utah 2006
96 **63-46b-8**, as last amended by Chapter 72, Laws of Utah 1988
97 **63-55-259**, as last amended by Chapters 232 and 289, Laws of Utah 2005
98 **63-55-263**, as last amended by Chapters 82 and 86, Laws of Utah 2006
99 **63-55b-154**, as last amended by Chapter 205, Laws of Utah 2003
100 **63-55b-159**, as last amended by Chapter 90, Laws of Utah 2004
101 **63-55b-163**, as last amended by Chapter 340, Laws of Utah 2006
102 **63-55b-178**, as last amended by Chapter 65, Laws of Utah 2004
103 **63-56-806**, as renumbered and amended by Chapter 25, Laws of Utah 2005
104 **63-65-2**, as last amended by Chapter 294, Laws of Utah 2005
105 **63-90-2**, as last amended by Chapter 293, Laws of Utah 1997
106 **63A-3-205**, as last amended by Chapter 294, Laws of Utah 2005
107 **63F-1-205**, as enacted by Chapter 169, Laws of Utah 2005
108 **64-13-14**, as last amended by Chapter 116, Laws of Utah 1987
109 **67-11-2**, as last amended by Chapter 92, Laws of Utah 1987
110 **67-11-3**, as last amended by Chapter 92, Laws of Utah 1987
111 **67-11-4**, Utah Code Annotated 1953
112 **67-11-5**, Utah Code Annotated 1953
113 **67-11-6**, as last amended by Chapter 92, Laws of Utah 1987
114 **70A-2-504**, as enacted by Chapter 154, Laws of Utah 1965
115 **70A-3-312**, as last amended by Chapter 79, Laws of Utah 1996
116 **70A-10-102**, as enacted by Chapter 154, Laws of Utah 1965
117 **70C-7-107**, as enacted by Chapter 24, Laws of Utah 1988
118 **73-10-23**, as last amended by Chapter 234, Laws of Utah 1990
119 **75-2-1105**, as last amended by Chapter 129, Laws of Utah 1993
120 **75-3-902**, as enacted by Chapter 150, Laws of Utah 1975

- 121 **75-5-428**, as enacted by Chapter 150, Laws of Utah 1975
- 122 **76-6-505**, as last amended by Chapter 291, Laws of Utah 1995
- 123 **76-6-506.2**, as last amended by Chapter 60, Laws of Utah 1991
- 124 **76-6-603**, as enacted by Chapter 78, Laws of Utah 1979
- 125 **77-13-1**, as last amended by Chapter 61, Laws of Utah 2002
- 126 **77-19-4**, as enacted by Chapter 15, Laws of Utah 1980
- 127 **77-27-24**, as enacted by Chapter 15, Laws of Utah 1980
- 128 **77-27-29**, as enacted by Chapter 15, Laws of Utah 1980
- 129 **77-30-23**, as last amended by Chapter 67, Laws of Utah 1984
- 130 **77-30-25**, as enacted by Chapter 15, Laws of Utah 1980
- 131 **77-32-303**, as last amended by Chapter 251, Laws of Utah 2001
- 132 **78-13-1**, Utah Code Annotated 1953
- 133 **78-14-9.5**, as last amended by Chapters 30 and 240, Laws of Utah 1992
- 134 **78-24-14**, Utah Code Annotated 1953
- 135 **78-25-16**, as last amended by Chapter 20, Laws of Utah 1995
- 136 **78-31a-121**, as enacted by Chapter 326, Laws of Utah 2002
- 137 **78-34-4.5**, as last amended by Chapter 358, Laws of Utah 2006
- 138 **78-34-9**, as last amended by Chapter 223, Laws of Utah 2004
- 139 **78-34-21**, as last amended by Chapter 214, Laws of Utah 2003
- 140 **78-39-15**, Utah Code Annotated 1953
- 141 **78-45-7.5**, as last amended by Chapter 324, Laws of Utah 2006

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

144 Section 1. Section **3-1-9** is amended to read:

145 **3-1-9. Powers.**

146 [(†)] (1) An association formed under this act, or an association which might be formed
 147 under this act and which existed at the time this act took effect, shall have power and capacity
 148 to act possessed by natural persons and may do each and everything necessary, suitable or
 149 proper for the accomplishment of any one or more of the purposes, or the attainment of any one
 150 or more of the objects herein enumerated or conducive to or expedient for the interests or
 151 benefit of the association, and may exercise all powers, rights, and privileges necessary or

152 incident thereto, including the exercise of any rights, powers, and privileges granted by the
153 laws of this state to corporations generally, excepting such as are inconsistent with the express
154 provisions of this act.

155 [~~Special Authority.~~]

156 [~~(H)~~] (2) Without limiting or enlarging the grant of authority contained in [~~Subdivision~~
157 ~~of this section~~] Subsection (1), it is hereby specifically provided that every such association
158 shall have authority:

159 (a) to act as agent, broker, or attorney in fact for its members and other producers, and
160 for any subsidiary or affiliated association, and otherwise to assist or join with associations
161 engaged in any one or more of the activities authorized by its articles, and to hold title for its
162 members and other producers, and for subsidiary and affiliated association to property handled
163 or managed by the association on their behalf;

164 (b) to make contracts and to exercise by its board or duly authorized officers or agents,
165 all such incidental powers as may be necessary, suitable or proper for the accomplishment of
166 the purposes of the association and not inconsistent with law or its articles, and that may be
167 conducive to or expedient for the interest or benefit of the association;

168 (c) to make loans or advances to members or producer-patrons or to the members of an
169 association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire,
170 endorse, discount, or sell any evidence of debt, obligation or security;

171 (d) to establish and accumulate reasonable reserves and surplus funds and to abolish
172 the same; also to create, maintain, and terminate revolving funds or other similar funds which
173 may be provided for in the bylaws of the association;

174 (e) to own and hold membership in or shares of the stock of other associations and
175 corporations and the bonds or other obligations thereof, engaged in any related activity; or, in
176 producing, warehousing or marketing any of the products handled by the association; or, in
177 financing its activities; and while the owner thereof, to exercise all the rights of ownership,
178 including the right to vote thereon;

179 (f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its
180 purposes may require;

181 (g) to borrow money without limitation as to amount, and to give its notes, bonds, or
182 other obligations therefor and secure the payment thereof by mortgage or pledge;

183 (h) to deal in products of, and handle machinery, equipment, supplies and perform
184 services for nonmembers to an amount not greater in annual value than such as are dealt in,
185 handled or performed for or on behalf of its members, but the value of the annual purchases
186 made for persons who are neither members nor producers shall not exceed fifteen per centum
187 of the value of all its purchases. Business transacted by an association for or on behalf of the
188 United States or any agency or instrumentality thereof, shall be disregarded in determining the
189 volume or value of member and nonmember business transacted by such association;

190 (i) if engaged in marketing the products of its members, to hedge its operations;

191 (j) to have a corporate seal and to alter the same at pleasure;

192 (k) to continue as a corporation for the time limited in its articles, and if no time limit
193 is specified then perpetually;

194 (l) to sue and be sued in its corporate name;

195 (m) to conduct business in this state and elsewhere as may be permitted by law; and

196 (n) to dissolve and wind up.

197 Section 2. Section **3-1-17** is amended to read:

198 **3-1-17. Contracts with association.**

199 ~~[(f)]~~ (1) (a) The bylaws may require members to execute contracts with the association
200 in which the members agree to patronize the facilities created by the association, and to sell all
201 or a specified part of their products to or through it, or to buy all or a specified part of their
202 supplies from or through the association or any facilities created by it.

203 (b) If the members contract to sell through the association, the fact that for certain
204 purposes the relation between the association and its members may be one of agency shall not
205 prevent the passage from the member to the association of absolute and exclusive title to the
206 products which are the subject matter of the contract.

207 (c) Such title shall pass to the association upon delivery of the product, or at any other
208 time specified in the contract.

209 (d) If the period of the contract exceeds three years, the bylaws and the contracts
210 executed thereunder shall specify a reasonable period, not less than ten days in each year, after
211 the third year, during which the member, by giving to the association such reasonable notice as
212 the association may prescribe, may withdraw from the association; provided, that if the bylaws
213 or contracts executed hereunder so specify, a member may not withdraw from the association

214 while indebted thereto.

215 (e) In the absence of such a withdrawal provision, a member may withdraw at any time
216 after three years.

217 [~~Damages for Breach.~~]

218 [(H)] (2) The contract may fix, as liquidated damages, which shall not be regarded as
219 penalties, specific sums to be paid by the members to the association upon the breach of any
220 provision of the contract regarding the use of any facilities of the association or the sale,
221 delivery, handling, or withholding of products; and may further provide that the member who
222 breaks his contract shall pay all costs, including premiums for bonds, and reasonable attorney's
223 fees, to be fixed by the court, in case the association prevails in any action upon the contract.

224 [~~Equitable Relief.~~]

225 [(H)] (3) (a) A court of competent jurisdiction may grant an injunction to prevent the
226 breach or further breach of the contract by a member and may decree specific performance
227 thereof.

228 (b) Pending the adjudication of such an action and upon filing a verified complaint
229 showing the breach or threatened breach, and a bond in such form and amount as may be
230 approved by the court, the court may grant a temporary restraining order or preliminary
231 injunction against the member.

232 [~~Remedy Not Exclusive.~~]

233 [(IV)] (4) No remedy, either legal or equitable, herein provided for, shall be exclusive,
234 but the association may avail itself of any and all such remedies, at the same or different times,
235 in any action or proceeding.

236 [~~Landowners Presumed to Control Delivery.~~]

237 [(V)] (5) In any action upon such marketing contracts, it shall be conclusively
238 presumed that a landowner or landlord or lessor is able to control the delivery of products
239 produced on his land by tenants or others, whose tenancy or possession or work on such land or
240 the terms of whose tenancy or possession or labor thereon were created or changed after
241 execution by the landowner or landlord or lessor of such a marketing contract; and in such
242 actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against
243 such landowner, landlord, or lessor.

244 [~~Filing Contract.~~]

245 ~~[(V)]~~ (6) (a) The association may file contracts to sell agricultural products to or
246 through the association in the office of the county recorder of the county in which the products
247 are produced.

248 (b) If the association has uniform contracts with more than one member in any county,
249 it may, in lieu of filing the original contracts, file the affidavit of its president, vice president or
250 secretary, containing or having attached thereto:

251 ~~[(a)]~~ (i) a true copy of the uniform contract entered into with its members producing
252 such product in that county; and

253 ~~[(b)]~~ (ii) the names of the members who have executed such contract and a description
254 of the land on which the product is produced, if such description is contained in the contract.

255 (c) The association may file from time to time thereafter affidavits containing revised
256 or supplementary lists of the members producing such product in that county without setting
257 forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof.

258 (d) All affidavits filed under this section shall state in substance that they are filed
259 pursuant to the provisions of this section.

260 (e) The county recorder shall file such affidavits and make endorsements thereon and
261 record and make entries thereof in the same manner as is required by law in the case of chattel
262 mortgages, and he shall compile and make available for public inspection a convenient index
263 containing the names of all signers of such contracts, and collect for his services hereunder the
264 same fees as for chattel mortgages.

265 (f) The filing of any such contract, or such affidavit, shall constitute constructive notice
266 of the contents thereof, and of the association's title or right to the product embraced in such
267 contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons dealing with
268 the members with reference to such product.

269 (g) No title, right, or lien of any kind shall be acquired to or on the product thereafter
270 except through the association or with its consent, or subject to its rights; and the association
271 may recover the possession of such property from any and all subsequent purchasers,
272 encumbrancers, and creditors, and those claiming under them, in whose possession the same
273 may be found, by any appropriate action for the recovery of personal property, and it may have
274 relief by injunction and for damages.

275 Section 3. **3-1-41** is amended to read:

276 **3-1-41. Domestic or foreign corporations or associations -- Plan of merger --**
277 **Articles of merger -- Certificate of merger.**

278 (1) (a) A Utah cooperative association owning 90% of the outstanding shares of each
279 class of a foreign or domestic corporation or association may merge such other corporation or
280 association into itself without the approval of the shareholders or members of either
281 corporation or association.

282 (b) The governing board shall, by resolution, approve a plan of merger setting forth:

283 ~~[(a)]~~ (i) the name of the subsidiary corporation or association and the name of the
284 corporation or association owning 90% or more of its shares, which is hereafter designated as
285 the surviving corporation or association; and

286 ~~[(b)]~~ (ii) the manner and basis for converting each class of shares of the subsidiary
287 corporation or association into shares, obligations, or other securities of the surviving
288 corporation or association, or of any other corporation or association, in whole or in part, into
289 cash or other property.

290 (c) A copy of the plan of merger shall be mailed to each record member or shareholder
291 of the subsidiary corporation or association.

292 (2) (a) Articles of merger shall be executed in triplicate by the president or vice
293 president and the secretary or an assistant secretary of the surviving corporation or association
294 and verified by one of its officers.

295 (b) The articles of merger shall set forth:

296 ~~[(a)]~~ (i) the plan of merger;

297 ~~[(b)]~~ (ii) the number of outstanding shares of each class of the subsidiary corporation or
298 association and the number of such shares of each class owned by the surviving corporation or
299 association; and

300 ~~[(c)]~~ (iii) the date a copy of the plan of merger was mailed to shareholders or members
301 of the subsidiary corporation or association.

302 (3) (a) Triplicate originals of the articles of merger shall be delivered to the Division of
303 Corporations and Commercial Code on the 30th day after mailing a copy of the plan to
304 shareholders or members.

305 (b) If that division finds such articles conform to law and that all fees prescribed by this
306 act have been paid, it shall:

307 ~~[(a)]~~ (i) endorse on each of said triplicate originals the word "filed," together with the
308 month, date, and year of filing;

309 ~~[(b)]~~ (ii) file one of the triplicate originals with the Division of Corporations and
310 Commercial Code and forward another triplicate original to the state Department of
311 Agriculture and Food; and

312 ~~[(c)]~~ (iii) issue a certificate of merger with the remaining triplicate original affixed.

313 (c) The certificate of merger, together with a triplicate original of the articles of merger
314 affixed by the Division of Corporations and Commercial Code, shall be returned to the
315 surviving corporation or association or its representative.

316 (4) The merger of a foreign corporation or association into a Utah cooperative
317 association shall conform to the laws of the state under which each such foreign corporation or
318 association is organized.

319 Section 4. Section **7-1-104** is amended to read:

320 **7-1-104. Exemptions from application of title.**

321 (1) This title does not apply to:

322 ~~[(1)]~~ (a) investment companies registered under the Investment Company Act of 1940,
323 15 U.S.C. Sec. 80a-1 et seq.;

324 ~~[(2)]~~ (b) securities brokers and dealers registered pursuant to ~~[the]~~:

325 (i) Title 61, Chapter 1, Utah Uniform Securities Act; or

326 (ii) the federal Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.;

327 ~~[(3)]~~ (c) depository or other institutions performing transaction account services,
328 including third party transactions, in connection with;

329 (i) the purchase and redemption of investment company shares~~;~~; or ~~[in connection~~
330 ~~with]~~

331 (ii) access to a margin or cash securities account maintained by a person identified in
332 Subsection ~~[(2)]~~ (1)(b); or

333 ~~[(4)]~~ (d) insurance companies selling interests in an investment company or "separate
334 account" and subject to regulation by the Utah Insurance Department.

335 (2) (a) An institution, organization, or person is not exempt from this title if, within
336 this state, it holds itself out to the public as receiving and holding deposits from residents of
337 this state, whether evidenced by a certificate, promissory note, or otherwise.

338 (b) An investment company is not exempt from this title unless ~~[it]~~ the investment
 339 company is registered with the United States Securities and Exchange Commission under the
 340 Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., and is advised by an
 341 investment advisor; ~~[(a)]~~

342 (i) which is registered with the United States Securities and Exchange Commission
 343 under the Investment Advisors Act of 1940, 15 U.S.C. Sec. 80b-1 et seq.; and ~~[(b)]~~

344 (ii) which advises investment companies and other accounts with a combined value of
 345 at least \$50,000,000.

346 Section 5. Section **7-7-12** is amended to read:

347 **7-7-12. Inspection of books and records -- Confidentiality -- Communication**
 348 **between members or stockholders.**

349 (1) Every member, stockholder, or borrower of an association shall have the right to
 350 inspect, upon paying any costs of retrieval or reproduction and upon reasonable notice and
 351 during regular business hours:

352 (a) the books and records of the association which do not contain any confidential
 353 information relating to a loan, savings account, or voting rights of another member,
 354 stockholder, or borrower; and

355 (b) such books and records of the association as pertain to ~~[his]~~ the member's,
 356 stockholder's, or borrower's own loan, savings account, or the determination of ~~[his]~~ the
 357 member's, stockholder's, or borrower's voting rights. ~~[Otherwise,]~~

358 (2) Except as provided in Subsection (1), the right of inspection and examination of the
 359 books, accounts, and records shall be limited to:

360 ~~[(i)]~~ (a) the commissioner and supervisor, or their duly authorized representatives;

361 ~~[(ii)]~~ (b) persons authorized to act for the association;

362 ~~[(iii)]~~ (c) any federal or state instrumentality or agency authorized to inspect or
 363 examine the books and records of an insured association;

364 ~~[(iv)]~~ (d) the Office of Thrift Supervision, the Federal Deposit Insurance Corporation,
 365 or their successor agencies; and

366 ~~[(v)]~~ (e) any person acting under authority of a court of competent jurisdiction.

367 ~~[(2)]~~ (3) Except as otherwise stated in this section, the books and records pertaining to
 368 the accounts, loans, and voting rights of savers, borrowers, members, and stockholders shall be

369 kept confidential by the association, its directors, officers, and employees, and by the
370 commissioner, the supervisor, and their examiners and representatives, unless disclosure is
371 expressly or impliedly authorized by the saver, borrower, member, or stockholder.

372 ~~[(3)]~~ (4) Each member or stockholder of an association has the right to communicate
373 with other members or stockholders of the same association with reference to any question
374 pending or to be presented for consideration at a meeting of the members or stockholders. A
375 member or stockholder, in order to communicate with other members or stockholders, shall
376 submit to the association a request, subscribed by ~~[him]~~ the member or stockholder, which
377 includes:

378 (a) ~~[his]~~ the member's or stockholder's full name and address;

379 (b) the nature and extent of ~~[his]~~ the member's or stockholder's interest in the
380 association at the time ~~[his]~~ the member's or stockholder's application for communication is
381 made;

382 (c) a statement of the reasons for and purposes of the communication and that the
383 communication is not for any reason other than the business welfare of the association;

384 (d) a copy of the communication; and

385 (e) if the communication concerns a question to be raised at a meeting of the members
386 or stockholders of the association, the date of the meeting at which the matter will be
387 presented.

388 ~~[(4)]~~ (5) Within ten days after receipt of the request referred to in Subsection ~~[(3)]~~ (4)
389 the association shall notify the requesting member or stockholder of:

390 (a) the approximate number of the members or stockholders and the estimated amount
391 of the reasonable costs and expenses of mailing the communication; or

392 (b) its determination to refuse the request and the specific reasons for its refusal,
393 including its determination whether or not the request has been made for a proper purpose.

394 (6) Unless the association has refused the request referred to in Subsection (5), ~~[it]~~ the
395 association shall, within seven days after receipt of the sum specified by it under this
396 ~~[subsection]~~ Subsection (6) and sufficient copies of the communication, mail the
397 communication to all its members or stockholders.

398 ~~[(5)]~~ (7) If a request referred to in Subsection ~~[(3)]~~ (4) is refused by an association, the
399 requesting member or stockholder may submit ~~[his]~~ the member's or stockholder's request and

400 the refusal [~~thereof~~] of the request to the supervisor for review. The supervisor may issue an
 401 order denying the request or, if [~~he~~] the supervisor finds the request is not for any reason other
 402 than the business welfare of the association and is in all other respects proper, granting the
 403 request and directing the association to mail the communication to all its members or
 404 stockholders in accordance with the provisions of [~~Subsection (4)~~] Subsections (5) and (6).

405 [~~(6)~~] (8) Insofar as the provisions of this section are not inconsistent with federal law,
 406 [~~such provisions~~] this section shall apply to a federal [~~associations~~] association whose home
 407 offices are located in this state, and to the members or stockholders [~~thereof~~] of that federal
 408 association except that any review of a refusal by an association under Subsection [~~(4)~~] (5)
 409 shall be tendered to the Office of Thrift Supervision or successor federal agency in the case of a
 410 federal association.

411 Section 6. Section **10-8-2** is amended to read:

412 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**
 413 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

414 (1) (a) A municipal legislative body may:

415 (i) appropriate money for corporate purposes only;

416 (ii) provide for payment of debts and expenses of the corporation;

417 (iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and
 418 dispose of real and personal property for the benefit of the municipality, whether the property is
 419 within or without the municipality's corporate boundaries;

420 (iv) improve, protect, and do any other thing in relation to this property that an
 421 individual could do; and

422 (v) subject to Subsection (2) and after first holding a public hearing, authorize
 423 municipal services or other nonmonetary assistance to be provided to or waive fees required to
 424 be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

425 (b) A municipality may:

426 (i) furnish all necessary local public services within the municipality;

427 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities
 428 located and operating within and operated by the municipality; and

429 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property
 430 located inside or outside the corporate limits of the municipality and necessary for any of the

431 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78,
432 Chapter 34, Eminent Domain, and general law for the protection of other communities.

433 (c) Each municipality that intends to acquire property by eminent domain under
434 Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be
435 acquired, deliver to the owner a copy of a booklet or other materials provided by the property
436 rights ombudsman, created under Section [~~63-34-13~~] 13-43-201, dealing with the property
437 owner's rights in an eminent domain proceeding.

438 (d) Subsection (1)(b) may not be construed to diminish any other authority a
439 municipality may claim to have under the law to acquire by eminent domain property located
440 inside or outside the municipality.

441 (2) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to the
442 provisions of Subsection (3). The total amount of services or other nonmonetary assistance
443 provided or fees waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1%
444 of the municipality's budget for that fiscal year.

445 (3) It is considered a corporate purpose to appropriate money for any purpose that, in
446 the judgment of the municipal legislative body, provides for the safety, health, prosperity,
447 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality
448 subject to the following:

449 (a) The net value received for any money appropriated shall be measured on a
450 project-by-project basis over the life of the project.

451 (b) The criteria for a determination under this Subsection (3) shall be established by the
452 municipality's legislative body. A determination of value received, made by the municipality's
453 legislative body, shall be presumed valid unless it can be shown that the determination was
454 arbitrary, capricious, or illegal.

455 (c) The municipality may consider intangible benefits received by the municipality in
456 determining net value received.

457 (d) Prior to the municipal legislative body making any decision to appropriate any
458 funds for a corporate purpose under this section, a public hearing shall be held. Notice of the
459 hearing shall be published in a newspaper of general circulation at least 14 days prior to the
460 date of the hearing, or, if there is no newspaper of general circulation, by posting notice in at
461 least three conspicuous places within the municipality for the same time period.

462 (e) A study shall be performed before notice of the public hearing is given and shall be
463 made available at the municipality for review by interested parties at least 14 days immediately
464 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the
465 appropriation. In making the study, the following factors shall be considered:

466 (i) what identified benefit the municipality will receive in return for any money or
467 resources appropriated;

468 (ii) the municipality's purpose for the appropriation, including an analysis of the way
469 the appropriation will be used to enhance the safety, health, prosperity, moral well-being,
470 peace, order, comfort, or convenience of the inhabitants of the municipality; and

471 (iii) whether the appropriation is necessary and appropriate to accomplish the
472 reasonable goals and objectives of the municipality in the area of economic development, job
473 creation, affordable housing, blight elimination, job preservation, the preservation of historic
474 structures and property, and any other public purpose.

475 (f) An appeal may be taken from a final decision of the municipal legislative body, to
476 make an appropriation. The appeal shall be filed within 30 days after the date of that decision,
477 to the district court. Any appeal shall be based on the record of the proceedings before the
478 legislative body. A decision of the municipal legislative body shall be presumed to be valid
479 unless the appealing party shows that the decision was arbitrary, capricious, or illegal.

480 (g) The provisions of this Subsection (3) apply only to those appropriations made after
481 May 6, 2002.

482 (h) This section shall only apply to appropriations not otherwise approved pursuant to
483 Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6,
484 Uniform Fiscal Procedures Act for Utah Cities.

485 (4) (a) Before a municipality may dispose of a significant parcel of real property, the
486 municipality shall:

487 (i) provide reasonable notice of the proposed disposition at least 14 days before the
488 opportunity for public comment under Subsection (4)(a)(ii); and

489 (ii) allow an opportunity for public comment on the proposed disposition.

490 (b) Each municipality shall, by ordinance, define what constitutes:

491 (i) a significant parcel of real property for purposes of Subsection (4)(a); and

492 (ii) reasonable notice for purposes of Subsection (4)(a)(i).

493 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
494 real property for the purpose of expanding the municipality's infrastructure or other facilities
495 used for providing services that the municipality offers or intends to offer shall provide written
496 notice, as provided in this Subsection (5), of its intent to acquire the property if:

497 (i) the property is located:

498 (A) outside the boundaries of the municipality; and

499 (B) in a county of the first or second class; and

500 (ii) the intended use of the property is contrary to:

501 (A) the anticipated use of the property under the general plan of the county in whose
502 unincorporated area or the municipality in whose boundaries the property is located; or

503 (B) the property's current zoning designation.

504 (b) Each notice under Subsection (5)(a) shall:

505 (i) indicate that the municipality intends to acquire real property;

506 (ii) identify the real property; and

507 (iii) be sent to:

508 (A) each county in whose unincorporated area and each municipality in whose
509 boundaries the property is located; and

510 (B) each affected entity.

511 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
512 63-2-304(7).

513 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
514 previously provided notice under Section 10-9a-203 identifying the general location within the
515 municipality or unincorporated part of the county where the property to be acquired is located.

516 (ii) If a municipality is not required to comply with the notice requirement of
517 Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide
518 the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real
519 property.

520 Section 7. Section **10-9a-801** is amended to read:

521 **10-9a-801. No district court review until administrative remedies exhausted --**

522 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**

523 **-- Staying of decision.**

524 (1) No person may challenge in district court a municipality's land use decision made
525 under this chapter, or under a regulation made under authority of this chapter, until that person
526 has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
527 Variances, if applicable.

528 (2) (a) Any person adversely affected by a final decision made in the exercise of or in
529 violation of the provisions of this chapter may file a petition for review of the decision with the
530 district court within 30 days after the local land use decision is final.

531 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
532 property owner files a request for arbitration of a constitutional taking issue with the property
533 rights ombudsman under Section [~~63-34-13~~] 13-43-204 until 30 days after:

534 (A) the arbitrator issues a final award; or

535 (B) the property rights ombudsman issues a written statement under Subsection
536 [~~63-34-13(4)~~] 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

537 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
538 taking issue that is the subject of the request for arbitration filed with the property rights
539 ombudsman by a property owner.

540 (iii) A request for arbitration filed with the property rights ombudsman after the time
541 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

542 (3) (a) The courts shall:

543 (i) presume that a decision, ordinance, or regulation made under the authority of this
544 chapter is valid; and

545 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,
546 capricious, or illegal.

547 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion
548 is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.

549 (c) A final decision of a land use authority or an appeal authority is valid if the decision
550 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

551 (d) A determination of illegality requires a determination that the decision, ordinance,
552 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or
553 the ordinance or regulation adopted.

554 (4) The provisions of Subsection (2)(a) apply from the date on which the municipality

555 takes final action on a land use application for any adversely affected third party, if the
556 municipality conformed with the notice provisions of Part 2, Notice, or for any person who had
557 actual notice of the pending decision.

558 (5) If the municipality has complied with Section 10-9a-205, a challenge to the
559 enactment of a land use ordinance or general plan may not be filed with the district court more
560 than 30 days after the enactment.

561 (6) The petition is barred unless it is filed within 30 days after the appeal authority's
562 decision is final.

563 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to
564 the reviewing court the record of its proceedings, including its minutes, findings, orders, and, if
565 available, a true and correct transcript of its proceedings.

566 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
567 correct transcript for purposes of this Subsection (7).

568 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
569 by the land use authority or appeal authority, as the case may be.

570 (ii) The court may not accept or consider any evidence outside the record of the land
571 use authority or appeal authority, as the case may be, unless that evidence was offered to the
572 land use authority or appeal authority, respectively, and the court determines that it was
573 improperly excluded.

574 (b) If there is no record, the court may call witnesses and take evidence.

575 (9) (a) The filing of a petition does not stay the decision of the land use authority or
576 authority appeal authority, as the case may be.

577 (b) (i) Before filing a petition under this section or a request for mediation or
578 arbitration of a constitutional taking issue under Section [~~63-34-13~~] 13-43-204, the aggrieved
579 party may petition the appeal authority to stay its decision.

580 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed
581 pending district court review if the appeal authority finds it to be in the best interest of the
582 municipality.

583 (iii) After a petition is filed under this section or a request for mediation or arbitration
584 of a constitutional taking issue is filed under Section [~~63-34-13~~] 13-43-204, the petitioner may
585 seek an injunction staying the appeal authority's decision.

586 Section 8. Section **11-13-314** is amended to read:

587 **11-13-314. Eminent domain authority of certain commercial project entities.**

588 (1) (a) Subject to Subsection (2), a commercial project entity that existed as a project
589 entity before January 1, 1980 may, with respect to a project or facilities providing additional
590 project capacity in which the commercial project entity has an interest, acquire property within
591 the state through eminent domain, subject to restrictions imposed by Title 78, Chapter 34,
592 Eminent Domain, and general law for the protection of other communities.

593 (b) Subsection (1)(a) may not be construed to:

594 (i) give a project entity the authority to acquire water rights by eminent domain; or

595 (ii) diminish any other authority a project entity may claim to have under the law to
596 acquire property by eminent domain.

597 (2) Each project entity that intends to acquire property by eminent domain under
598 Subsection (1)(a) shall, upon the first contact with the owner of the property sought to be
599 acquired, deliver to the owner a copy of a booklet or other materials provided by the property
600 rights ombudsman, created under Section [~~63-34-13~~] 13-43-201, dealing with the property
601 owner's rights in an eminent domain proceeding.

602 Section 9. **13-5-9** is amended to read:

603 **13-5-9. Transactions involving more than one item -- Limitation on quantity of**
604 **article or product sold or offered for sale to any one customer.**

605 (1) For the purpose of preventing evasion of this [~~act~~] chapter in all sales involving
606 more than one item or commodity the vendor's or distributor's selling price shall not be below
607 the cost of all articles, products, and commodities included in such transactions. Each article,
608 product, or commodity individually advertised or offered for sale, shall be individually subject
609 to the requirements of Section 13-5-7, when sold with other articles, products, or commodities.

610 (2) Under this section, proof of limitation of the quantity of any article or product sold
611 or offered for sale to any one customer of a quantity less than the entire supply thereof owned
612 or possessed by the seller or which he is otherwise authorized to sell at the place of such sale or
613 offering for sale, together with proof that the price at which the article or product is so sold or
614 offered for sale is in fact below its cost, raises a presumption of the purpose or the intent of the
615 sale being to injure competitors or destroy competition, and is unlawful. This section applies
616 only to sales by persons conducting a retail business, the principal part of which involves the

617 resale to consumers of commodities purchased or acquired for that purpose, as distinguished
618 from persons principally engaged in the sale to consumers of commodities of their own
619 production or manufacture.

620 (3) There shall be no circumvention of the provisions of this [act] chapter relating to
621 the quantity of articles or products any one customer may purchase by requiring presentation of
622 coupons, certificates, special purchase authorizations, or any other procedures designed in any
623 way to limit quantity of purchases as provided herein.

624 Section 10. **13-11a-3** is amended to read:

625 **13-11a-3. Deceptive trade practices enumerated -- Records to be kept -- Defenses.**

626 (1) Deceptive trade practices occur when, in the course of his business, vocation, or
627 occupation:

628 (a) A person passes off goods or services as those of another.

629 (b) A person causes likelihood of confusion or of misunderstanding as to the source,
630 sponsorship, approval, or certification of goods or services.

631 (c) A person causes likelihood of confusion or of misunderstanding as to affiliation,
632 connection, association with, or certification by another.

633 (d) A person uses deceptive representations or designations of geographic origin in
634 connection with goods or services.

635 (e) A person represents that goods or services have sponsorship, approval,
636 characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has
637 a sponsorship, approval, status, affiliation, or connection that he does not have.

638 (f) A person represents that goods are original or new if they are deteriorated, altered,
639 reconditioned, reclaimed, used, or second-hand.

640 (g) A person represents that goods or services are of a particular standard, quality, or
641 grade, or that goods are of a particular style or model, if they are of another.

642 (h) A person disparages the goods, services, or business of another by false or
643 misleading representation of fact.

644 (i) A person advertises goods or services or the price of goods and services with intent
645 not to sell them as advertised. If specific advertised prices will be in effect for less than one
646 week from the advertisement date, the advertisement must clearly and conspicuously disclose
647 the specific time period during which the prices will be in effect.

648 (j) A person advertises goods or services with intent not to supply a reasonable
649 expectable public demand, unless:

650 (i) the advertisement clearly and conspicuously discloses a limitation of quantity; or

651 (ii) the person issues rainchecks for the advertised goods or services.

652 (k) A person makes false or misleading statements of fact concerning the reasons for,
653 existence of, or amounts of price reductions.

654 (l) A person makes a comparison between his own sale or discount price and a
655 competitor's nondiscounted price without clearly and conspicuously disclosing that fact.

656 (m) A person, without clearly and conspicuously disclosing the date of the price
657 assessment makes a price comparison with the goods of another based upon a price assessment
658 performed more than seven days prior to the date of the advertisement or uses in an
659 advertisement the results of a price assessment performed more than seven days prior to the
660 date of the advertisement without disclosing, in a print ad, the date of the price assessment, or
661 in a radio or television ad, the time frame of the price assessment.

662 (n) A person advertises or uses in a price assessment or comparison a price that is not
663 his own unless this fact is:

664 (i) clearly and conspicuously disclosed; and

665 (ii) the representation of the price is accurate. With respect to the price of a
666 competitor, the price must be one at which the competitor offered the goods or services for sale
667 in the product area at the time of the price assessment, and must not be an isolated price.

668 (o) A person represents as independent an audit, accounting, price assessment, or
669 comparison of prices of goods or services, when such audit, accounting, price assessment, or
670 comparison is not independent. Such audit, accounting, price assessment, or comparison shall
671 be independent if the price assessor randomly selects the goods to be compared, and the time
672 and place of such comparison, and no agreement or understanding exists between the supplier
673 and the price assessor that could cause the results of the assessment to be fraudulent or
674 deceptive. The independence of such audit, accounting, or price comparison is not invalidated
675 merely because the advertiser pays a fee therefor, but is invalidated if the audit, accounting, or
676 price comparison is done by a full or part time employee of the advertiser.

677 (p) A person represents, in an advertisement of a reduction from the supplier's own
678 prices, that the reduction is from a regular price, when the former price is not a regular price as

679 defined in Subsection 13-11a-2(12).

680 (q) A person advertises a price comparison or the result of a price assessment or
681 comparison that uses, in any way, an identified competitor's price without clearly and
682 conspicuously disclosing the identity of the price assessor and any relationship between the
683 price assessor and the supplier. Examples of disclosure complying with this section are: "Price
684 assessment performed by Store Z"; "Price assessment performed by a certified public
685 accounting firm"; "Price assessment performed by employee of Store Y."

686 (r) A person makes a price comparison between a category of the supplier's goods and
687 the same category of the goods of another, without randomly selecting the individual goods or
688 services upon whose prices the comparison is based. For the purposes of this subsection,
689 goods or services are randomly selected when the supplier has no advance knowledge of what
690 goods and services will be surveyed by the price assessor, and when the supplier certifies its
691 lack of advance knowledge by an affidavit to be retained in the supplier's records for one year.

692 (s) A person makes a comparison between similar but nonidentical goods or services
693 unless the nonidentical goods or services are of essentially similar quality to the advertised
694 goods or services or the dissimilar aspects are clearly and conspicuously disclosed in the
695 advertisements.

696 (i) It is prima facie evidence of compliance with [~~this~~] Subsection (1)(s) if:
697 [(†)] (A) the goods compared are substantially the same size; and
698 [(†)] (B) the goods compared are of substantially the same quality, which may include
699 similar models of competing brands of goods, or goods made of substantially the same
700 materials and made with substantially the same workmanship.

701 (ii) It is prima facie evidence of a deceptive comparison under [~~this section~~] Subsection
702 (1)(s) when the prices of brand name goods and generic goods are compared.

703 (t) A person engages in any other conduct which similarly creates a likelihood of
704 confusion or of misunderstanding.

705 (2) Any supplier who makes a comparison with a competitor's price in advertising shall
706 maintain for a period of one year records that disclose the factual basis for such price
707 comparisons and from which the validity of such claim can be established.

708 (3) It [~~shall be~~] is a defense to any claim of false or deceptive price representations
709 under this chapter that a person:

710 (a) has no knowledge that the represented price is not genuine; and
711 (b) has made reasonable efforts to determine whether the represented price is genuine.

712 (4) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs in
713 which a supplier compares the price of a single item of its goods or services with those of
714 another.

715 (5) In order to prevail in an action under this chapter, a complainant need not prove
716 competition between the parties or actual confusion or misunderstanding.

717 (6) This chapter does not affect unfair trade practices otherwise actionable at common
718 law or under other statutes of this state.

719 Section 11. **13-21-7** is amended to read:

720 **13-21-7. Written contracts required -- Contents -- Notice of cancellation of**
721 **contract.**

722 (1) Each contract between the buyer and a credit services organization for the purchase
723 of the services of the credit services organization shall be in writing, dated, signed by the buyer,
724 and include all of the following:

725 (a) a conspicuous statement in bold type, in immediate proximity to the space reserved
726 for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time
727 prior to midnight of the fifth day after the date of the transaction. See the attached notice of
728 cancellation form for an explanation of this right.";

729 (b) the terms and conditions of payment, including the total of all payments to be made
730 by the buyer, whether to the credit services organization or to some other person;

731 (c) a full and detailed description of the services to be performed by the credit services
732 organization for the buyer, including all guarantees and all promises of full or partial refunds,
733 and the estimated date by which the services are to be performed, or estimated length of time
734 for performing the services; and

735 (d) the credit services organization's principal business address and the name and
736 address of its agent, in Utah, authorized to receive service of process.

737 (2) The contract shall be accompanied by a completed form in duplicate, captioned
738 "Notice of Cancellation," which shall be attached to the contract and easily detachable, and
739 which shall contain in bold type the following statement written in the same language as used
740 in the contract:

741 "Notice of Cancellation

742 You may cancel this contract, without any penalty or obligation, within five days from
743 the date the contract is signed.

744 If you cancel, any payment made by you under this contract will be returned within 10
745 days following receipt by the seller of your cancellation notice.

746 To cancel this contract, mail or deliver a signed dated copy of this cancellation notice,
747 or any other written notice, to _____(name of seller)_____at _____(address of seller)_____
748 (place of business)_____ not later than midnight _____(date)_____.

749 I hereby cancel this transaction.

750 _____(date)

751 _____
752 (purchaser's signature)"

753 (3) The credit services organization shall give to the buyer a copy of the completed
754 contract and all other documents the credit services organization requires the buyer to sign at
755 the time they are signed.

756 Section 12. Section **16-6a-822** is amended to read:

757 **16-6a-822. General standards of conduct for directors and officers.**

758 (1) (a) A director shall discharge the director's duties as a director, including the
759 director's duties as a member of a committee of the board, in accordance with Subsection (2).

760 (b) An officer with discretionary authority shall discharge the officer's duties under that
761 authority in accordance with Subsection (2).

762 (2) A director or an officer described in Subsection (1) shall discharge the director or
763 officer's duties:

764 (a) in good faith;

765 (b) with the care an ordinarily prudent person in a like position would exercise under
766 similar circumstances; and

767 (c) in a manner the director or officer reasonably believes to be in the best interests of
768 the nonprofit corporation.

769 (3) In discharging duties, a director or officer is entitled to rely on information,
770 opinions, reports, or statements, including financial statements and other financial data, if
771 prepared or presented by:

772 (a) one or more officers or employees of the nonprofit corporation whom the director
773 or officer reasonably believes to be reliable and competent in the matters presented;

774 (b) legal counsel, a public accountant, or another person as to matters the director or
775 officer reasonably believes are within the person's professional or expert competence;

776 (c) religious authorities or ministers, priests, rabbis, or other persons:

777 (i) whose position or duties in the nonprofit corporation, or in a religious organization
778 with which the nonprofit corporation is affiliated, the director or officer believes justify
779 reliance and confidence; and

780 (ii) who the director or officer believes to be reliable and competent in the matters
781 presented; or

782 (d) in the case of a director, a committee of the board of directors of which the director
783 is not a member if the director reasonably believes the committee merits confidence.

784 (4) A director or officer is not acting in good faith if the director or officer has
785 knowledge concerning the matter in question that makes reliance otherwise permitted by
786 Subsection (3) unwarranted.

787 (5) A director, regardless of title, may not be considered to be a trustee with respect to
788 any property held or administered by the nonprofit corporation including property that may be
789 subject to restrictions imposed by the donor or transferor of the property.

790 (6) A director or officer is not liable to the nonprofit corporation, its members, or any
791 conservator or receiver, or any assignee or successor-in-interest of the nonprofit corporation or
792 member, for any action taken, or any failure to take any action, as an officer or director, as the
793 case may be, unless:

794 (a) the director or officer has breached or failed to perform the duties of the office as
795 set forth in this section; and

796 (b) the breach or failure to perform constitutes:

797 (i) willful misconduct; or

798 (ii) intentional infliction of harm on:

799 (A) the nonprofit corporation; or

800 (B) the members of the nonprofit corporation; or

801 (iii) ~~[the breach or failure to perform constitutes]~~ gross negligence.

802 Section 13. Section **17-27a-801** is amended to read:

803 **17-27a-801. No district court review until administrative remedies exhausted --**
804 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**
805 **-- Staying of decision.**

806 (1) No person may challenge in district court a county's land use decision made under
807 this chapter, or under a regulation made under authority of this chapter, until that person has
808 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
809 Variances, if applicable.

810 (2) (a) Any person adversely affected by a final decision made in the exercise of or in
811 violation of the provisions of this chapter may file a petition for review of the decision with the
812 district court within 30 days after the local land use decision is final.

813 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
814 property owner files a request for arbitration of a constitutional taking issue with the property
815 rights ombudsman under Section [~~63-34-13~~] 13-43-204 until 30 days after:

816 (A) the arbitrator issues a final award; or

817 (B) the property rights ombudsman issues a written statement under Subsection
818 [~~63-34-13(4)~~] 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

819 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
820 taking issue that is the subject of the request for arbitration filed with the property rights
821 ombudsman by a property owner.

822 (iii) A request for arbitration filed with the property rights ombudsman after the time
823 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

824 (3) (a) The courts shall:

825 (i) presume that a decision, ordinance, or regulation made under the authority of this
826 chapter is valid; and

827 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,
828 capricious, or illegal.

829 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion
830 is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.

831 (c) A final decision of a land use authority or an appeal authority is valid if the decision
832 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

833 (d) A determination of illegality requires a determination that the decision, ordinance,

834 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or
835 the ordinance or regulation adopted.

836 (4) The provisions of Subsection (2)(a) apply from the date on which the county takes
837 final action on a land use application for any adversely affected third party, if the county
838 conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice
839 of the pending decision.

840 (5) If the county has complied with Section 17-27a-205, a challenge to the enactment
841 of a land use ordinance or general plan may not be filed with the district court more than 30
842 days after the enactment.

843 (6) The petition is barred unless it is filed within 30 days after land use authority or the
844 appeal authority's decision is final.

845 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to
846 the reviewing court the record of its proceedings, including its minutes, findings, orders and, if
847 available, a true and correct transcript of its proceedings.

848 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
849 correct transcript for purposes of this Subsection (7).

850 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
851 by the land use authority or appeal authority, as the case may be.

852 (ii) The court may not accept or consider any evidence outside the record of the land
853 use authority or appeal authority, as the case may be, unless that evidence was offered to the
854 land use authority or appeal authority, respectively, and the court determines that it was
855 improperly excluded.

856 (b) If there is no record, the court may call witnesses and take evidence.

857 (9) (a) The filing of a petition does not stay the decision of the land use authority or
858 appeal authority, as the case may be.

859 (b) (i) Before filing a petition under this section or a request for mediation or
860 arbitration of a constitutional taking issue under Section [~~63-34-13~~] 13-43-204, the aggrieved
861 party may petition the appeal authority to stay its decision.

862 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed
863 pending district court review if the appeal authority finds it to be in the best interest of the
864 county.

865 (iii) After a petition is filed under this section or a request for mediation or arbitration
866 of a constitutional taking issue is filed under Section [~~63-34-13~~] 13-43-204, the petitioner may
867 seek an injunction staying the appeal authority's decision.

868 Section 14. Section **17A-2-412** is amended to read:

869 **17A-2-412. Service area considered body corporate -- Powers.**

870 (1) Upon its creation, a county service area is a body corporate and politic and a
871 quasi-municipal public corporation.

872 (2) A county service area may:

873 (a) exercise all powers of eminent domain possessed by counties in Utah in the manner
874 provided by law for the exercise of eminent domain power by counties;

875 (b) sue and be sued;

876 (c) enter into contracts considered desirable by the board of trustees of the service area
877 to carry out the functions of the service area including contracts with municipal corporations,
878 counties or other public corporations, county service areas or districts;

879 (d) impose and collect charges or fees for any commodities, services, or facilities
880 afforded by the service area to its consumers and pledge all or any part of the revenues so
881 derived to the payment of any bonds of the service area, whether the bonds are issued as
882 revenue bonds or as general obligations of the service area;

883 (e) sell, lease, mortgage, encumber or otherwise dispose of any properties, including
884 water and water rights, owned by the service area upon such terms and conditions as the board
885 of trustees may determine;

886 (f) own any and all property or interests in property, including water and water rights,
887 that the board of trustees considers necessary or appropriate to carry out the purposes of the
888 service area and acquire property or interests in property by purchase, lease, gift, devise, or
889 bequest;

890 (g) request the county executive to utilize any existing county offices, officers, or
891 employees for purposes of the service area when in the opinion of the board of trustees it is
892 advisable to do so;

893 (h) employ officers, employees, and agents including attorneys, accountants, engineers,
894 and fiscal agents, and fix their compensation;

895 (i) [~~(A)~~] (i) require officers and employees charged with the handling of funds to

896 furnish good and sufficient surety bonds; or

897 ~~[(B)]~~ (ii) purchase a blanket surety bond for all officers and employees;

898 (j) fix the times for holding regular meetings;

899 (k) adopt an official seal; and

900 (l) adopt bylaws and regulations for the conduct of its business and affairs.

901 (3) (a) If the county service area issues revenue bonds payable solely from the revenue
902 of commodities, services, and facilities, the fees and charges imposed shall always be sufficient
903 to carry out the provisions of the resolution authorizing the bonds.

904 (b) The board of trustees may take necessary action and adopt regulations to assure the
905 collection and enforcement of all fees and charges imposed.

906 (c) If the county service area furnishes more than one commodity, service, or facility,
907 the board of trustees may bill for the fees and charges for all commodities, services, and
908 facilities in a single bill.

909 (d) The board of trustees may suspend furnishing commodities, services, or facilities to
910 a consumer if the consumer fails to pay all fees and charges when due.

911 (4) Except for services rendered by the county executive, a county may charge the
912 county service area a reasonable amount for services rendered pursuant to a request under
913 Subsection (2)(g).

914 Section 15. Section **23-13-1** is amended to read:

915 **23-13-1. Title.**

916 This ~~[act shall be]~~ title is known ~~[and may be cited]~~ as the "Wildlife Resources Code of
917 Utah."

918 Section 16. Section **26-18-503** is amended to read:

919 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
920 **programs.**

921 (1) The division may renew Medicaid certification of a certified program if the
922 program, without lapse in service to Medicaid recipients, has its nursing care facility program
923 certified by the division at the same physical facility.

924 (2) (a) The division may issue a Medicaid certification for a new nursing care facility
925 program if a current owner of the Medicaid certified program transfers its ownership of the
926 Medicaid certification to the new nursing care facility program and the new nursing care

927 facility program meets all of the following conditions:

928 (i) the new nursing care facility program operates at the same physical facility as the
929 previous Medicaid certified program;

930 (ii) the new nursing care facility program gives a written assurance to the director in
931 accordance with Subsection (4); and

932 (iii) the new nursing care facility program receives the Medicaid certification within
933 one year of the date the previously certified program ceased to provide medical assistance to a
934 Medicaid recipient.

935 (b) A nursing care facility program that receives Medicaid certification under the
936 provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing
937 care facility program if the new nursing care facility program:

938 (i) is not owned in whole or in part by the previous nursing care facility program; or

939 (ii) is not a successor in interest of the previous nursing care facility program.

940 (3) The division may issue a Medicaid certification to a nursing care facility program
941 that was previously a certified program but now resides in a new or renovated physical facility
942 if the nursing care facility program meets all of the following:

943 (a) the nursing care facility program met all applicable requirements for Medicaid
944 certification at the time of closure;

945 (b) the new or renovated physical facility is in the same county or within a five-mile
946 radius of the original physical facility;

947 (c) the time between which the certified program ceased to operate in the original
948 facility and will begin to operate in the new physical facility is not more than three years;

949 (d) if Subsection (3)(c) applies, the certified program notifies the department within 90
950 days after ceasing operations in its original facility, of its intent to retain its Medicaid
951 certification;

952 (e) the provider gives written assurance to the director in accordance with Subsection
953 (4) that no third party has a legitimate claim to operate a certified program at the previous
954 physical facility; and

955 (f) the bed capacity in the physical facility that will be used for additional Medicaid
956 certification has not been expanded by more than 30% over the previously certified program's
957 bed capacity, unless the director has approved additional beds in accordance with Subsection

958 (5).

959 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) must
960 give written assurances satisfactory to the director or his designee that:

961 (i) no third party has a legitimate claim to operate the certified program;

962 (ii) the requesting entity agrees to defend and indemnify the department against any
963 claims by a third party who may assert a right to operate the certified program; and

964 (iii) if a third party is found, by final agency action of the department after exhaustion
965 of all administrative and judicial appeal rights, to be entitled to operate a certified program at
966 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

967 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):

968 (i) the certified program shall immediately surrender its Medicaid certification and
969 comply with division rules regarding billing for Medicaid and the provision of services to
970 Medicaid patients; and

971 (ii) the department shall transfer the surrendered Medicaid certification to the third
972 party who prevailed under Subsection (4)(a)(iii).

973 (5) (a) As provided in Subsection [~~26-21-502~~] 26-18-502(2)(b), the director shall issue
974 additional Medicaid certification when requested by a nursing care facility or other interested
975 party if there is insufficient bed capacity with current certified programs in a service area. A
976 determination of insufficient bed capacity shall be based on the nursing care facility or other
977 interested party providing reasonable evidence of an inadequate number of beds in the county
978 or group of counties impacted by the requested Medicaid certification based on:

979 (i) current demographics which demonstrate nursing care facility occupancy levels of at
980 least 90% for all existing and proposed facilities within a prospective three-year period;

981 (ii) current nursing care facility occupancy levels of 90%; or

982 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility
983 requesting the additional certification.

984 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program
985 must demonstrate by an independent analysis that the nursing care facility can financially
986 support itself at an after tax break-even net income level based on projected occupancy levels.

987 (c) When making a determination to certify additional beds or an additional nursing
988 care facility program under Subsection (5)(a):

989 (i) the director shall consider whether the nursing care facility will offer specialized or
990 unique services that are underserved in a service area;

991 (ii) the director shall consider whether any Medicaid certified beds are subject to a
992 claim by a previous certified program that may reopen under the provisions of Subsections (2)
993 and (3); and

994 (iii) the director may consider how to add additional capacity to the long-term care
995 delivery system to best meet the needs of Medicaid recipients.

996 Section 17. Section **26-34-2** is amended to read:

997 **26-34-2. Definition of death -- Determination of death.**

998 (1) An individual [~~who~~] is dead if the individual has sustained either:

999 (a) irreversible cessation of circulatory and respiratory functions; or

1000 (b) irreversible cessation of all functions of the entire brain, including the brain stem[;].

1001 [~~is dead.~~]

1002 (2) A determination of death must be made in accordance with accepted medical
1003 standards.

1004 Section 18. Section **26-39-104** is amended to read:

1005 **26-39-104. Duties of the department.**

1006 (1) With regard to child care programs licensed under this chapter, the department
1007 may:

1008 (a) make and enforce rules to implement this chapter and, as necessary to protect
1009 children's common needs for a safe and healthy environment, to provide for:

1010 (i) adequate facilities and equipment; and

1011 (ii) competent caregivers considering the age of the children and the type of program
1012 offered by the licensee;

1013 (b) make and enforce rules necessary to carry out the purposes of this chapter, in the
1014 following areas:

1015 (i) requirements for applications, the application process, and compliance with other
1016 applicable statutes and rules;

1017 (ii) documentation and policies and procedures that providers shall have in place in
1018 order to be licensed, in accordance with Subsection (1)(a);

1019 (iii) categories, classifications, and duration of initial and ongoing licenses;

1020 (iv) changes of ownership or name, changes in licensure status, and changes in
1021 operational status;

1022 (v) license expiration and renewal, contents, and posting requirements;

1023 (vi) procedures for inspections, complaint resolution, disciplinary actions, and other
1024 procedural measures to encourage and assure compliance with statute and rule; and

1025 (vii) guidelines necessary to assure consistency and appropriateness in the regulation
1026 and discipline of licensees; and

1027 (c) set and collect licensing and other fees in accordance with Section 26-1-6.

1028 (2) (a) The department may not regulate educational curricula, academic methods, or
1029 the educational philosophy or approach of the provider.

1030 (b) The department shall allow for a broad range of educational training and academic
1031 background in certification or qualification of child day care directors.

1032 (3) In licensing and regulating child care programs, the department shall reasonably
1033 balance the benefits and burdens of each regulation and, by rule, provide for a range of
1034 licensure, depending upon the needs and different levels and types of child care provided.

1035 (4) Notwithstanding the definition of "child" in Subsection 26-39-102(1), the
1036 department shall count children through age 12 and children with disabilities through age 18
1037 toward the minimum square footage requirement for indoor and outdoor areas, including the
1038 child of:

1039 (a) a licensed residential child care provider; or

1040 (b) an owner or employee of a licensed child care center.

1041 (5) Notwithstanding Subsection (1)(a)(i), the department may not exclude floor space
1042 used for furniture, fixtures, or equipment from the minimum square footage requirement for
1043 indoor and outdoor areas if the furniture, fixture, or equipment is used:

1044 (a) by children;

1045 (b) for the care of children; or

1046 (c) to store classroom materials.

1047 (6) (a) A child care center constructed prior to January 1, 2004, and licensed and
1048 operated as a child care center continuously since January 1, 2004, is exempt from the
1049 [~~department for~~ department's group size restrictions, if the child to caregiver ratios are
1050 maintained, and adequate square footage is maintained for specific classrooms.

1051 (b) An exemption granted under Subsection (6)(a) is transferrable to subsequent
1052 licensed operators at the center if a licensed child care center is continuously maintained at the
1053 center.

1054 (7) The department shall develop, by rule, a five-year phased-in compliance schedule
1055 for playground equipment safety standards.

1056 Section 19. Section **31A-16-105** is amended to read:

1057 **31A-16-105. Registration of insurers.**

1058 (1) (a) Every insurer which is authorized to do business in this state and which is a
1059 member of an insurance holding company system shall register with the commissioner, except
1060 a foreign insurer subject to registration requirements and standards adopted by statute or
1061 regulation in the jurisdiction of its domicile, if the requirements and standards are substantially
1062 similar to those contained in this section, Subsections 31A-16-106(1)(a) and (2) and either
1063 Subsection 31A-16-106(1)(b) or a statutory provision similar to the following: "Each registered
1064 insurer shall keep current the information required to be disclosed in its registration statement
1065 by reporting all material changes or additions within 15 days after the end of the month in
1066 which it learns of each change or addition."

1067 (b) Any insurer which is subject to registration under this section shall register within
1068 15 days after it becomes subject to registration, and annually thereafter by May 1 of each year
1069 for the previous calendar year, unless the commissioner for good cause extends the time for
1070 registration and then at the end of the extended time period. The commissioner may require
1071 any insurer authorized to do business in the state, which is a member of a holding company
1072 system, and which is not subject to registration under this section, to furnish a copy of the
1073 registration statement, the summary specified in Subsection (3), or any other information filed
1074 by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

1075 (2) Every insurer subject to registration shall file the registration statement on a form
1076 prescribed by the National Association of Insurance Commissioners, which shall contain the
1077 following current information:

1078 (a) the capital structure, general financial condition, and ownership and management of
1079 the insurer and any person controlling the insurer;

1080 (b) the identity and relationship of every member of the insurance holding company
1081 system;

1082 (c) any of the following agreements in force, and transactions currently outstanding or
1083 which have occurred during the last calendar year between the insurer and its affiliates:

1084 (i) loans, other investments, or purchases, sales or exchanges of securities of the
1085 affiliates by the insurer or of securities of the insurer by its affiliates;

1086 (ii) purchases, sales, or exchanges of assets;

1087 (iii) transactions not in the ordinary course of business;

1088 (iv) guarantees or undertakings for the benefit of an affiliate which result in an actual
1089 contingent exposure of the insurer's assets to liability, other than insurance contracts entered
1090 into in the ordinary course of the insurer's business;

1091 (v) all management agreements, service contracts, and all cost-sharing arrangements;

1092 (vi) reinsurance agreements;

1093 (vii) dividends and other distributions to shareholders; and

1094 [~~(ix)~~] (viii) consolidated tax allocation agreements;

1095 (d) any pledge of the insurer's stock, including stock of any subsidiary or controlling
1096 affiliate, for a loan made to any member of the insurance holding company system; and

1097 (e) any other matters concerning transactions between registered insurers and any
1098 affiliates as may be included in any subsequent registration forms adopted or approved by the
1099 commissioner.

1100 (3) All registration statements shall contain a summary outlining all items in the
1101 current registration statement representing changes from the prior registration statement.

1102 (4) No information need be disclosed on the registration statement filed pursuant to
1103 Subsection (2) if the information is not material for the purposes of this section. Unless the
1104 commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or
1105 extensions of credit, investments, or guarantees involving one-half of 1%, or less, of an
1106 insurer's admitted assets as of the next preceding December 31 may not be considered material
1107 for purposes of this section.

1108 (5) Any person within an insurance holding company system subject to registration
1109 shall provide complete and accurate information to an insurer if the information is reasonably
1110 necessary to enable the insurer to comply with the provisions of this chapter.

1111 (6) The commissioner shall terminate the registration of any insurer which
1112 demonstrates that it no longer is a member of an insurance holding company system.

1113 (7) The commissioner may require or allow two or more affiliated insurers subject to
1114 registration under this section to file a consolidated registration statement.

1115 (8) The commissioner may allow an insurer which is authorized to do business in this
1116 state, and which is part of an insurance holding company system, to register on behalf of any
1117 affiliated insurer which is required to register under Subsection (1) and to file all information
1118 and material required to be filed under this section.

1119 (9) The provisions of this section do not apply to any insurer, information, or
1120 transaction if, and to the extent that, the commissioner by rule or order exempts the insurer
1121 from the provisions of this section.

1122 (10) Any person may file with the commissioner a disclaimer of affiliation with any
1123 authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member of
1124 an insurance holding company system. The disclaimer shall fully disclose all material
1125 relationships and bases for affiliation between the person and the insurer as well as the basis for
1126 disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of
1127 any duty to register or report under this section which may arise out of the insurer's relationship
1128 with the person unless and until the commissioner disallows the disclaimer. The commissioner
1129 shall disallow a disclaimer only after furnishing all parties in interest with notice and
1130 opportunity to be heard, and after making specific findings of fact to support the disallowance.

1131 (11) The failure to file a registration statement or any summary of the registration
1132 statement required by this section within the time specified for the filing is a violation of this
1133 section.

1134 Section 20. Section **31A-17-402** is amended to read:

1135 **31A-17-402. Valuation of liabilities.**

1136 (1) Subject to this section, the commissioner shall make rules:

1137 (a) specifying the liabilities required to be reported by an insurer in a financial
1138 statement submitted under Section 31A-2-202; and

1139 (b) the methods of valuing the liabilities described in Subsection (1)(a).

1140 (2) For life insurance, the methods of valuing specified pursuant to Subsection (1)(b)
1141 shall be consistent with Part 5, Standard Valuation Law.

1142 (3) Title insurance reserves are provided for under Section 31A-17-408.

1143 (4) In determining the financial condition of an insurer, liabilities include:

- 1144 (a) the estimated amount necessary to pay:
- 1145 (i) all the insurer's unpaid losses and claims incurred on or before the date of statement,
- 1146 whether reported or unreported; and
- 1147 (ii) the expense of adjustment or settlement of a loss or claim described in this
- 1148 Subsection (4)(a);
- 1149 (b) for life, accident and health insurance, and annuity contracts:
- 1150 (i) the reserves on life insurance policies and annuity contracts in force, valued
- 1151 according to appropriate tables of mortality and the applicable rates of interest;
- 1152 (ii) the reserves for accident and health benefits, for both active and disabled lives;
- 1153 (iii) the reserves for accidental death benefits; and
- 1154 (iv) any additional reserves:
- 1155 (A) that may be required by the commissioner by rule; or
- 1156 (B) if no rule is applicable under Subsection (4)(b)(iv)(A), in a manner consistent with
- 1157 the practice formulated or approved by the National Association of Insurance Commissioners
- 1158 with respect to those types of insurance;
- 1159 (c) subject to Subsection (6), for insurance other than life, accident and health, and
- 1160 title insurance, the amount of reserves equal to the unearned portions of the gross premiums
- 1161 charged on policies in force, computed:
- 1162 (i) on a daily or monthly pro rata basis; or
- 1163 (ii) other basis approved by the commissioner;
- 1164 (d) for ocean marine and other transportation insurance, reserves:
- 1165 (i) equal to 50% of the amount of premiums upon risks covering not more than one trip
- 1166 or passage not terminated; and
- 1167 (ii) computed:
- 1168 (A) upon a pro rata basis; or
- 1169 (B) with the commissioner's consent, in accordance with a method provided under
- 1170 Subsection (4)(c); and
- 1171 (e) the insurer's other liabilities due or accrued at the date of statement including:
- 1172 (i) taxes;
- 1173 (ii) expenses; and
- 1174 (iii) other obligations.

1175 (5) (a) Except to the extent provided in Subsection (5)(b), in determining the financial
1176 condition of an insurer of workers' compensation insurance, the insurer's liabilities do not
1177 include any liability based on the liability of the Employer's Reinsurance Fund under Section
1178 34A-2-702 for industrial accidents or occupational diseases occurring on or before June 30,
1179 1994.

1180 (b) Notwithstanding Subsection (5)(a), the liability of an insurer of workers'
1181 compensation insurance includes any premium assessment:

1182 (i) imposed under Section 59-9-101 [~~or 59-9-101.3~~]; and

1183 (ii) due at the date of statement.

1184 (6) After adopting a method for computing the reserves described in Subsection (4)(c),
1185 an insurer may not change the method without the commissioner's written consent.

1186 Section 21. Section **31A-26-210** is amended to read:

1187 **31A-26-210. Reports from organizations licensed as adjusters.**

1188 (1) Organizations licensed as adjusters under Section 31A-26-203 shall report to the
1189 commissioner, at the times and in the detail and form as prescribed by rule, every change in the
1190 list of natural person adjusters authorized to act in that position for the organization.

1191 (2) Each organization licensed as an adjuster shall, at the time of paying its license
1192 continuation fee under [~~Subsection~~] Section 31A-3-103, report to the commissioner, in the
1193 form established by the commissioner by rule, all natural person adjusters acting in that
1194 position for the organization.

1195 (3) Organizations licensed under this chapter shall designate and report promptly to the
1196 commissioner the name of at least one natural person who has authority to act on behalf of the
1197 organization in all matters pertaining to compliance with this title and orders of the
1198 commissioner.

1199 (4) Where a license is held by an organization, both the organization itself and any
1200 persons named on the license shall, for purposes of this section, be considered to be the holders
1201 of the license. If a person named on the organization license commits any act or fails to
1202 perform any duty which is a ground for suspending, revoking, or limiting the organization
1203 license, the commissioner may suspend, revoke, or limit the license of that person or the
1204 organization, or both.

1205 Section 22. Section **32A-13-103** is amended to read:

1206 **32A-13-103. Searches, seizures, and forfeitures.**

1207 (1) The following are subject to forfeiture pursuant to the procedures and substantive
1208 protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

1209 (a) all alcoholic products possessed, used, offered for sale, sold, given, furnished,
1210 supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried,
1211 transported, or distributed in violation of this title or commission rules;

1212 (b) all packages or property used or intended for use as a container for an alcoholic
1213 product in violation of this title or commission rules;

1214 (c) all raw materials, products, and equipment used, or intended for use, in
1215 manufacturing, processing, adulterating, delivering, importing, or exporting any alcoholic
1216 product in violation of this title or commission rules;

1217 (d) all implements, furniture, fixtures, or other personal property used or kept for any
1218 violation of this title or commission rules;

1219 (e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to
1220 transport or in any manner facilitate the transportation, sale, receipt, possession, or
1221 concealment of property described in Subsection (1)(a), (b), (c), or (d); and

1222 (f) all books, records, receipts, ledgers, or other documents used or intended for use in
1223 violation of this title or commission rules.

1224 (2) Any of the property subject to forfeiture under this title may be seized by any peace
1225 officer of this state or any other person authorized by law upon process issued by any court
1226 having jurisdiction over the property in accordance with the procedures provided in Title 77,
1227 Chapter 23, Part 2, Search Warrants. However, seizure without process may be made when:

1228 (a) the seizure is incident to an arrest or search under a search warrant or an inspection
1229 under an administrative inspection warrant;

1230 (b) the property subject to seizure has been the subject of a prior judgment in favor of
1231 the state in a criminal injunction or forfeiture proceeding under this title;

1232 (c) the peace officer or other person authorized by law has probable cause to believe
1233 that the property is directly or indirectly dangerous to health or safety; or

1234 (d) the peace officer or other person authorized by law has probable cause to believe
1235 that the property is being or has been used, intended to be used, held, or kept in violation of this
1236 title or commission rules.

1237 (3) If the property is seized pursuant to a search or administrative warrant, the peace
1238 officer or other person authorized by law shall make a proper receipt, return, and inventory and
1239 ensure the safekeeping of the property as required by Sections 77-23-206 through 77-23-208.
1240 If the magistrate who issued the warrant is a justice court judge, upon the filing of the return
1241 the jurisdiction of the justice court shall cease and the magistrate shall certify the record and all
1242 files without delay to the district court of the county in which the property was located. From
1243 the time of this filing, the district court has jurisdiction of the case.

1244 (4) In the event of seizure of property without process, the peace officer or other person
1245 authorized by law shall make a return of his acts without delay directly to the district court of
1246 the county in which the property was located, and the district court shall have jurisdiction of
1247 the case. The return shall describe all property seized, the place where it was seized, and any
1248 persons in apparent possession of the property. The officer or other person shall also promptly
1249 deliver a written inventory of anything seized to any person in apparent authority at the
1250 premises where the seizure was made, or post it in a conspicuous place at the premises. The
1251 inventory shall state the place where the property is being held.

1252 (5) Property taken or detained under this section is not repleviable but is considered in
1253 custody of the law enforcement agency making the seizure subject only to the orders of the
1254 court or the official having jurisdiction. When property is seized under this title, the
1255 appropriate person or agency may:

1256 (a) place the property under seal;

1257 (b) remove the property to a place designated by it or the warrant under which it was
1258 seized; or

1259 (c) take custody of the property and remove it to an appropriate location for disposition
1260 in accordance with law.

1261 (6) When any property is subject to forfeiture under this section, proceedings shall be
1262 instituted in accordance with the procedures and substantive protections of Title 24, Chapter 1,
1263 Utah Uniform Forfeiture Procedures Act.

1264 (7) When any property is ordered forfeited under Title 24, Chapter 1, Utah Uniform
1265 Forfeiture Procedures Act, by a finding of the court that no person is entitled to recover the
1266 property, the property, if an alcoholic product or a package used as a container for an alcoholic
1267 product, shall be disposed of as follows:

1268 (a) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or
 1269 impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in
 1270 saleable condition, sold in accordance with Section ~~[24-1-16]~~ 24-1-17.

1271 (b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and its
 1272 package or container shall be destroyed by the department under competent supervision.

1273 Section 23. Section **34-19-5** is amended to read:

1274 **34-19-5. Injunctive relief -- When available -- Necessary findings -- Procedure.**

1275 (1) No court, nor any judge or judges of ~~[it]~~ a court, shall have jurisdiction to issue a
 1276 temporary or permanent injunction in any case involving or growing out of a labor dispute, as
 1277 ~~[herein]~~ defined in Section 34-19-11, except after hearing the testimony of witnesses in open
 1278 court, ~~[(with opportunity for cross-examination)]~~, in support of the allegations of a complaint
 1279 made under oath and testimony in opposition to it, if offered, and except after findings of all of
 1280 the ~~[following]~~ facts described in Subsection (2) by the court, or a judge or judges ~~[of it]~~.

1281 (2) The findings required by Subsection (1) are all of the following:

1282 ~~[(1)]~~ (a) that unlawful acts have been threatened or committed and will be executed or
 1283 continued unless restrained;

1284 ~~[(2)]~~ (b) that substantial and irreparable injury to property or property rights of the
 1285 complainant will follow unless the relief requested is granted;

1286 ~~[(3)]~~ (c) that as to each item of relief granted greater injury will be inflicted upon
 1287 complainant by the denial of it than will be inflicted upon defendants by the granting of it;

1288 ~~[(4)]~~ (d) that no item of relief granted is relief that a court or judge of it has no
 1289 jurisdiction to restrain or enjoin under Section 34-19-2;

1290 ~~[(5)]~~ (e) that the complainant has no adequate remedy at law; and

1291 ~~[(6)]~~ (f) that the public officers charged with the duty to protect complainant's property
 1292 have failed or are unable to furnish adequate protection.

1293 ~~[Such]~~ (3) Subject to Subsection (4), the hearing required by Subsection (1) shall be
 1294 held after due and personal notice of it has been given, in such manner as the court shall direct,
 1295 to all known persons against whom relief is sought, and also to those public officers charged
 1296 with the duty to protect complainant's property~~[- provided, however, that if]~~.

1297 (4) (a) If a complainant shall also allege that unless a temporary restraining order shall
 1298 be issued before ~~[such]~~ a hearing may be had, a substantial and irreparable injury to

1299 complainant's property will be unavoidable, [~~such~~] a temporary restraining order may be
 1300 granted upon the expiration of such reasonable notice of application [~~therefor~~] for the
 1301 restraining order as the court may direct by order to show cause, but in no less than 48 hours.
 1302 This order to show cause shall be served upon such party or parties as are sought to be
 1303 restrained and as shall be specified in the order, and the restraining order shall issue only upon
 1304 testimony, or in the discretion of the court, upon affidavits, sufficient, if sustained to justify the
 1305 court in issuing a temporary injunction upon a hearing as [~~herein~~] provided for in this section.

1306 (b) Such a temporary restraining order shall be effective for no longer than five days,
 1307 and at the expiration of said five days shall become void and not subject to renewal or
 1308 extension[~~;~~~~but~~], except that if the hearing for a temporary injunction shall have been begun
 1309 before the expiration of the [~~said~~] five days, the restraining order may in the court's discretion
 1310 be continued until a decision is reached upon the issuance of the temporary injunction.

1311 (5) No temporary restraining order or temporary injunction shall be issued except on
 1312 condition that complainant shall first file an undertaking with adequate security sufficient to
 1313 recompense those enjoined for any loss, expense, or damage caused by the improvident or
 1314 erroneous issuance of such order or injunction, including all reasonable costs, [~~(f)~~]together with
 1315 [~~a~~] reasonable [~~attorney's fee~~] attorney fees, and expense against the order or against the
 1316 granting of any injunctive relief sought in the same proceeding and subsequently denied by the
 1317 court. This undertaking shall be understood to signify an agreement entered into by the
 1318 complainant and the surety upon which a decree may be rendered in the same suit or
 1319 proceeding against such complainant and surety, the complainant and the surety submitting
 1320 themselves to the jurisdiction of the court for that purpose[~~;~~~~but nothing herein contained~~],
 1321 except that nothing in this Subsection (5) shall deprive any party having a claim or cause of
 1322 action under or upon such undertaking from electing to pursue [~~his~~] the party's ordinary remedy
 1323 by suit at law or in equity.

1324 Section 24. Section **35A-3-313** is amended to read:

1325 **35A-3-313. Performance goals.**

1326 (1) As used in this section:

1327 (a) "Performance goals" means a target level of performance or an expected level of
 1328 performance against which actual performance is compared.

1329 (b) "Performance indicators" means actual performance information regarding a

1330 program or activity.

1331 (c) "Performance monitoring system" means a process to regularly collect and analyze
1332 performance information including performance indicators and performance goals.

1333 (2) (a) The department shall establish a performance monitoring system for cash
1334 assistance provided under this part.

1335 (b) The department shall establish the performance indicators and performance goals
1336 that will be used in the performance monitoring system for cash assistance under this part.

1337 (c) (i) On or before December 31 of each year, the department shall submit to the
1338 legislative fiscal analyst and the director of the Office of Legislative Research and General
1339 Counsel, a written report describing the difference between actual performance and
1340 performance goals for the second, third, and fourth quarters of the prior fiscal year and the first
1341 quarter of the current fiscal year.

1342 (ii) (A) The legislative fiscal analyst or the analyst's designee shall convey the
1343 information contained in the report to the appropriation subcommittee that has oversight
1344 responsibilities for the Department of Workforce Services during the General Session that
1345 follows the submission of the report.

1346 (B) The subcommittee may consider the information in its deliberations regarding the
1347 budget for services and supports under this chapter.

1348 (iii) The director of the Office of Legislative Research and General Counsel or the
1349 director's designee shall convey the information in the report to~~[(A)]~~ the legislative interim
1350 committee that has oversight responsibilities for the Department of Workforce Services~~[; and]~~.
1351 ~~[(B) the Utah Tomorrow Strategic Planning Committee.]~~

1352 Section 25. Section **36-26-102** is amended to read:

1353 **36-26-102. Utah International Trade Commission -- Creation -- Membership --**
1354 **Chairs -- Per diem and expenses.**

1355 (1) There is created the Utah International Trade Commission.

1356 (2) The commission membership consists of 11 members ~~[of which]~~:

1357 (a) eight members to be appointed as follows:

1358 (i) five members from the House of Representatives, appointed by the speaker of the
1359 House of Representatives, no more than three from the same political party; and

1360 (ii) three members from the Senate, appointed by the president of the Senate, no more

1361 than two members from the same political party;

1362 (b) two nonvoting members to be appointed by the governor; and

1363 (c) the Utah Attorney General or designee, who is a nonvoting member.

1364 (3) (a) The members appointed or reappointed by the governor shall serve two-year
1365 terms.

1366 (b) Notwithstanding the requirement of Subsection (3)(a), the governor shall, at the
1367 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1368 these members are staggered so that approximately half of the members are appointed or
1369 reappointed under Subsection (3)(c) every two years.

1370 (c) When a vacancy occurs among members appointed by the governor, the
1371 replacement shall be appointed for the unexpired term.

1372 (d) One of the two members appointed by the governor shall be from a Utah industry
1373 involved in international trade.

1374 (4) Four members of the commission constitute a quorum.

1375 (5) (a) The speaker of the House of Representatives shall designate a member of the
1376 House of Representatives appointed under Subsection (2)(a) as a cochair of the commission.

1377 (b) The president of the Senate shall designate a member of the Senate appointed under
1378 Subsection (2)(a) as a cochair of the commission.

1379 (6) (a) State government officer and employee members who do not receive salary, per
1380 diem, or expenses from their agency for their commission service may receive per diem and
1381 expenses at the rates incurred in the performance of their official commission duties at the rates
1382 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1383 (b) Legislators on the commission receive compensation and expenses as provided by
1384 law and legislative rule.

1385 Section 26. Section **38-1-27** is amended to read:

1386 **38-1-27. State Construction Registry -- Form and contents of notice of**
1387 **commencement, preliminary notice, and notice of completion.**

1388 (1) As used in this section and Sections 38-1-30 through 38-1-37:

1389 (a) "Alternate filing" means a legible and complete filing made in a manner established
1390 by the division under Subsection (2)(e) other than an electronic filing.

1391 (b) "Cancel" means to indicate that a filing is no longer given effect.

- 1392 (c) "Construction project," "project," or "improvement" means all labor, equipment,
1393 and materials provided:
- 1394 (i) under an original contract; or
1395 (ii) by, or under contracts with, an owner-builder.
- 1396 (d) "Database" means the State Construction Registry created in this section.
- 1397 (e) (i) "Designated agent" means the third party the Division of Occupational and
1398 Professional Licensing contracts with to create and maintain the State Construction Registry.
- 1399 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
1400 the state.
- 1401 (f) "Division" means the Division of Occupational and Professional Licensing.
- 1402 (g) "Interested person" means a person who may be affected by a construction project.
- 1403 (h) "Program" means the State Construction Registry Program created in this section.
- 1404 (2) Subject to receiving adequate funding through a legislative appropriation and
1405 contracting with an approved third party vendor who meets the requirements of Sections
1406 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:
- 1407 (a) (i) assist in protecting public health, safety, and welfare; and
1408 (ii) promote a fair working environment;
- 1409 (b) be overseen by the division with the assistance of the designated agent;
- 1410 (c) provide a central repository for notices of commencement, preliminary notices, and
1411 notices of completion filed in connection with all privately owned construction projects as well
1412 as all state and local government owned construction projects throughout Utah;
- 1413 (d) be accessible for filing and review by way of the program Internet website of:
- 1414 (i) notices of commencement;
1415 (ii) preliminary notices; and
1416 (iii) notices of completion;
- 1417 (e) accommodate:
- 1418 (i) electronic filing of the notices described in Subsection (2)(d); and
1419 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
1420 or any other alternate method as provided by rule made by the division in accordance with Title
1421 63, Chapter 46a, Utah Administrative Rulemaking Act;
- 1422 (f) (i) provide electronic notification for up to three e-mail addresses for each interested

- 1423 person or company who requests notice from the construction notice registry; and
- 1424 (ii) provide alternate means of notification for a person who makes an alternate filing,
- 1425 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in
- 1426 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
- 1427 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
- 1428 the date and time of the individual filing and the content of the individual filing.
- 1429 (3) (a) The designated agent shall provide notice of all other filings for a project to any
- 1430 person who files a notice of commencement, preliminary notice, or notice of completion for
- 1431 that project, unless the person:
- 1432 (i) requests that the person not receive notice of other filings; or
- 1433 (ii) does not provide the designated agent with the person's contact information in a
- 1434 manner that adequately informs the designated agent.
- 1435 (b) An interested person may request notice of filings related to a project.
- 1436 (c) The database shall be indexed by:
- 1437 (i) owner name;
- 1438 (ii) original contractor name;
- 1439 (iii) subdivision, development, or other project name, if any;
- 1440 (iv) project address;
- 1441 (v) lot or parcel number;
- 1442 (vi) unique project number assigned by the designated agent; and
- 1443 (vii) any other identifier that the division considers reasonably appropriate in
- 1444 collaboration with the designated agent.
- 1445 (4) (a) In accordance with the process required by Section 63-38-3.2, the division shall
- 1446 establish the fees for:
- 1447 (i) a notice of commencement;
- 1448 (ii) a preliminary notice;
- 1449 (iii) a notice of completion;
- 1450 (iv) a request for notice;
- 1451 (v) providing a required notice by an alternate method of delivery;
- 1452 (vi) a duplicate receipt of a filing; and
- 1453 (vii) account setup for a person who wishes to be billed periodically for filings with the

1454 database.

1455 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably
1456 necessary to create and maintain the database.

1457 (c) The fees established by the division may vary by method of filing if one form of
1458 filing is more costly to process than another form of filing.

1459 ~~[(d) Notwithstanding Subsection 63-38-3.2(2)(c), the division need not submit the fee~~
1460 ~~schedule for fees allowed by Subsections (4)(a)(i) through (vii) to the Legislature until the 2006~~
1461 ~~General Session.]~~

1462 ~~[(e)]~~ (d) The division may provide by contract that the designated agent may retain all
1463 fees collected by the designated agent except that the designated agent shall remit to the
1464 division the cost of the division's oversight under Subsection (2)(b).

1465 (5) (a) The database is classified as a public record under Title 63, Chapter 2,
1466 Government Records Access and Management Act, unless otherwise classified by the division.

1467 (b) A request for information submitted to the designated agent is not subject to Title
1468 63, Chapter 2, Government Records Access and Management Act.

1469 (c) Information contained in a public record contained in the database shall be
1470 requested from the designated agent.

1471 (d) The designated agent may charge a commercially reasonable fee allowed by the
1472 designated agent's contract with the division for providing information under Subsection (5)(c).

1473 (e) Notwithstanding Title 63, Chapter 2, Government Records Access and
1474 Management Act, if information is available in a public record contained in the database, a
1475 person may not request the information from the division.

1476 (f) (i) A person may request information that is not a public record contained in the
1477 database from the division in accordance with Title 63, Chapter 2, Government Records
1478 Access and Management Act.

1479 (ii) The division shall inform the designated agent of how to direct inquiries made to
1480 the designated agent for information that is not a public record contained in the database.

1481 (6) The following are not an adjudicative proceeding under Title 63, Chapter 46b,
1482 Administrative Procedures Act:

1483 (a) the filing of a notice permitted by this chapter;

1484 (b) the rejection of a filing permitted by this chapter; or

1485 (c) other action by the designated agent in connection with a filing of any notice
1486 permitted by this chapter.

1487 (7) The division and the designated agent need not determine the timeliness of any
1488 notice before filing the notice in the database.

1489 (8) (a) A person who is delinquent on the payment of a fee established under
1490 Subsection (4) may not file a notice with the database.

1491 (b) A determination that a person is delinquent on the payment of a fee for filing
1492 established under Subsection (4) shall be made in accordance with Title 63, Chapter 46b,
1493 Administrative Procedures Act.

1494 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the
1495 method of that person's payment of fees for filing notices with the database after issuance of the
1496 order.

1497 (9) If a notice is filed by a third party on behalf of another, the notice is considered to
1498 be filed by the person on whose behalf the notice is filed.

1499 (10) A person filing a notice of commencement, preliminary notice, or notice of
1500 completion is responsible for verifying the accuracy of information entered into the database,
1501 whether the person files electronically or by alternate or third party filing.

1502 Section 27. Section **38-2-3.2** is amended to read:

1503 **38-2-3.2. Sale of unclaimed personal property.**

1504 ~~[(A)]~~ (1) Any garments, clothing, shoes, wearing apparel or household goods,
1505 remaining in the possession of a person, on which cleaning, pressing, glazing, laundry or
1506 washing or repair work has been done or upon which alterations or repairs have been made or
1507 on which materials or supplies have been used or furnished by said person holding possession
1508 thereof, for a period of 90 days or more after the completion of such services or labors, may be
1509 sold by said person holding possession, to pay the unpaid reasonable or agreed charges therefor
1510 and the costs of notifying the owner or owners as hereinafter provided~~[- provided, however,~~
1511 ~~that].~~ However, the person to whom such charges are payable and owing shall first notify the
1512 owner or owners of such property of the time and place of such sale; and provided further, that
1513 property that is to be placed in storage after any of the services or labors mentioned herein shall
1514 not be affected by the provisions of this Subsection (1).

1515 ~~[(B)]~~ (2) All garments, clothing, shoes, wearing apparel on which any of these services

1516 or labors mentioned in ~~[the preceding]~~ Subsection (1) have been performed and then placed in
 1517 storage by agreement, and remaining in the possession of a person without the reasonable or
 1518 agreed charges having been paid for a period of 12 months may be sold to pay such charges and
 1519 costs of notifying the owner or owners as hereinafter provided~~[-, provided, however, that]_~~
 1520 However, the person to whom the charges are payable and owing shall first notify the owner or
 1521 owners of such property of the time and the place of sale, and provided, further, that persons
 1522 operating as warehouses or warehousemen shall not be affected by this Subsection (2).

1523 ~~[(C)-1:]~~ (3) (a) (i) The mailing of a properly stamped and registered letter, with a return
 1524 address marked thereon, addressed to the owner or owners of the property~~[-as aforesaid]~~, at
 1525 their address given at the time of delivery of the property to such person to render any of the
 1526 services or labors set out in this article, or if no address was so given, at their address if
 1527 otherwise known, stating the time and place of sale, shall constitute notice as required in this
 1528 ~~[article. Said]~~ section.

1529 (ii) The notice required in Subsection (3)(a)(i) shall be mailed at least 20 days before
 1530 the date of sale.

1531 (iii) The cost of mailing ~~[said]~~ the letter required under Subsection (3)(a)(i) shall be
 1532 added to the charges.

1533 ~~[2:]~~ (b) (i) If no address was given at the time of delivery of the property ~~[as aforesaid]~~,
 1534 or if the address of the owner or owners is not otherwise known, such person who has
 1535 performed the services or labors as aforesaid shall cause to be published at least once in a daily
 1536 or weekly newspaper in the city, town, city and county, wherein such property was delivered to
 1537 such person, a notice of the time and place of sale and such notice shall be published at least
 1538 ~~[twenty]~~ 20 days before the date of sale.

1539 (ii) Such notice constitutes notice as required in this ~~[article]~~ section if notice cannot be
 1540 mailed as ~~[aforesaid]~~ provided in Subsection (3)(b)(i).

1541 (iii) The costs of one such publication shall be added to the charges.

1542 ~~[(D)]~~ (4) (a) The person to whom the charges are payable and owing shall from the
 1543 proceeds of the sale, deduct the charges due plus the costs of notifying the owner or owners and
 1544 shall immediately thereafter mail to the owner or owners thereof at their address, if known, a
 1545 notice of the holding of such sale and the amount of the overplus, if any, due the owner or
 1546 owners~~[-, and at]~~. At any time within 12 months after such notice, such person shall, upon

1547 demand by the owner or owners, pay to the owner or owners such overplus in his hands.

1548 (b) If no such demand is made within such 12-month period, or, if the address of the
1549 owner or owners is unknown and no demand is made by the owner or owners within 12 months
1550 after the date of sale, then such overplus shall become the property of ~~[persons]~~ a person who
1551 ~~[have]~~ has performed the services or labors as ~~[aforesaid]~~ provided in Subsection (1).

1552 ~~[(E)]~~ (5) Each person taking advantage of this ~~[article]~~ section must keep posted in a
1553 prominent place in his receiving office or offices at all times two notices which shall read as
1554 follows:

1555 "All articles, cleaned, pressed, glazed, laundered, washed, altered or repaired, and not
1556 called for in 90 days will be sold to pay charges."

1557 "All articles stored by agreement and charges not having been paid for 12 months will
1558 be sold to pay charges."

1559 (6) The rights and benefits provided for in this section shall be and are in addition to
1560 the rights and benefits provided for in Section 38-2-4.

1561 Section 28. **40-10-9** is amended to read:

1562 **40-10-9. Permit required for surface coal mining operations -- Exemptions --**
1563 **Expiration of permit -- Maximum time for commencement of mining operations --**
1564 **Renewal of permit.**

1565 (1) No person shall engage in or carry out surface coal mining operations within the
1566 state unless that person has first obtained a permit issued by the division pursuant to an
1567 approved mining and reclamation program, but the permit will not be required if the operations
1568 are exempt as provided in Section 40-10-5.

1569 (2) (a) All permits issued pursuant to the requirements of this chapter shall be issued
1570 for a term not to exceed five years; but if the applicant demonstrates that a specified longer
1571 term is reasonably needed to allow the applicant to obtain necessary financing for equipment
1572 and the opening of the operation, and if the application is full and complete for the specified
1573 longer term, the division may grant a permit for the longer term.

1574 (b) A successor in interest to a permittee who applies for a new permit within 30 days
1575 after succeeding to the interest and who is able to obtain the bond coverage of the original
1576 permittee may continue surface coal mining and reclamation operations according to the
1577 approved mining and reclamation plan of the original permittee until the successor's application

1578 is granted or denied.

1579 (3) (a) A permit shall terminate if the permittee has not commenced the surface coal
1580 mining operations covered by the permit within three years after the issuance of the permit; but
1581 the division may grant reasonable extensions of time upon a showing that the extensions are
1582 necessary by reason of litigation precluding this commencement or threatening substantial
1583 economic loss to the permittee, or by reason of conditions beyond the control and without the
1584 fault or negligence of the permittee.

1585 (b) With respect to coal to be mined for use in a synthetic fuel facility or specific major
1586 electric generating facility, the permittee shall be deemed to have commenced surface mining
1587 operations at such time as the construction of the synthetic fuel or generating facility is
1588 initiated.

1589 (4) (a) (i) Any valid permit issued pursuant to this chapter shall carry with it the right
1590 of successive renewal upon expiration with respect to areas within the boundaries of the
1591 existing permit.

1592 (ii) The holders of the permit may apply for renewal, and the renewal shall be issued
1593 (but on application for renewal the burden shall be upon the opponents of renewal), subsequent
1594 to fulfillment of the public notice requirements of Sections 40-10-13 and 40-10-14 unless it is
1595 established that and written findings by the division are made that:

1596 ~~[(i)]~~ (A) the terms and conditions of the existing permit are not being satisfactorily
1597 met;

1598 ~~[(ii)]~~ (B) the present surface coal mining and reclamation operation is not in
1599 compliance with the approved plan;

1600 ~~[(iii)]~~ (C) the renewal requested substantially jeopardizes the operator's continuing
1601 responsibility on existing permit areas;

1602 ~~[(iv)]~~ (D) the operator has not provided evidence that the performance bond in effect
1603 for the operation will continue in full force and effect for any renewal requested in the
1604 application as well as any additional bond the division might require pursuant to Section
1605 40-10-15; or

1606 ~~[(v)]~~ (E) any additional revised or updated information required by the division has not
1607 been provided.

1608 (iii) Prior to the approval of any renewal of any permit, the division shall provide

1609 notice to the appropriate public authorities.

1610 (b) If an application for renewal of a valid permit includes a proposal to extend the
1611 mining operation beyond the boundaries authorized in the existing permit, the portion of the
1612 application for renewal of a valid permit which addresses any new land areas shall be subject to
1613 the full standards applicable to new applications under this chapter; but if the surface coal
1614 mining operations authorized by a permit issued pursuant to this chapter were not subject to the
1615 standards contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii) by reason of
1616 complying with the provisions of Subsection 40-10-11(2)(e), then the portion of the application
1617 for renewal of the permit which addresses any new land areas previously identified in the
1618 reclamation plan submitted pursuant to Section 40-10-10 shall not be subject to the standards
1619 contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii).

1620 (c) (i) Any permit renewal shall be for a term not to exceed the period of the original
1621 permit established by this chapter.

1622 (ii) Application for permit renewal shall be made at least 120 days prior to the
1623 expiration of the valid permit.

1624 Section 29. Section **41-3-408** is amended to read:

1625 **41-3-408. Resale of buyback or nonconforming vehicles -- Disclosure Statements.**

1626 (1) (a) A motor vehicle may not be offered, auctioned, sold, leased, transferred, or
1627 exchanged by a manufacturer or dealer with the knowledge that it is a buyback vehicle or a
1628 nonconforming vehicle without prior written disclosure in a clear and conspicuous manner, in
1629 accordance with this section.

1630 (b) This section also applies to buyback vehicles or nonconforming vehicles originally
1631 returned to a manufacturer or its agent in another state and subsequently resold, leased, or
1632 offered or displayed for resale or lease in this state.

1633 (c) An owner of a motor vehicle who is not a manufacturer or dealer, but who has been
1634 given information as required by Subsection (1)(a) or (b) shall give the information, in writing,
1635 to any prospective purchaser of the vehicle.

1636 (2) (a) The following disclosure language shall be contained in each contract for the
1637 sale or lease of a buyback vehicle or a nonconforming vehicle to a consumer or shall be
1638 contained in a form affixed to a contract, lease, bill of sale, or any other document that transfers
1639 title:

1640 "DISCLOSURE STATEMENT

1641 Vehicle Identification Number (VIN):

1642 Year: Make: Model:

1643 Prior Title Number: State of Title:

1644 Odometer Reading:

1645 This is a used motor vehicle. It was previously returned to the manufacturer or its agent
1646 in exchange for a replacement motor vehicle or a refund because it was alleged or found to
1647 have the following nonconformities:

- 1648 1.
- 1649 2.
- 1650 3.
- 1651 4.
- 1652 5.

1653 THIS DISCLOSURE MUST BE GIVEN BY THE SELLER TO THE BUYER EVERY
1654 TIME THIS VEHICLE IS RESOLD

1655 _____

1656 (Buyer's Signature) Date"

1657 (b) The text of the disclosure shall be printed in 12 point boldface type except the
1658 heading, which shall be in 16 point extra boldface type.

1659 (c) The entire notice shall be boxed.

1660 (d) Each nonconformity shall be listed separately on a numbered line.

1661 (e) A seller must obtain the consumer's acknowledgment of this written disclosure
1662 prior to completing a sale, lease, or other transfer of title as evidenced by the consumer's
1663 signature within the box containing the disclosure.

1664 (f) Within 30 days after the sale, lease, or other transfer of title of a nonconforming
1665 vehicle, the seller shall deliver to the Motor Vehicle Division a copy of the signed written
1666 disclosure required for the sale, lease, or other transfer of title of the nonconforming vehicle.
1667 The Motor Vehicle Division shall include the disclosure in the nonconforming vehicle's
1668 records.

1669 (3) (a) There shall be affixed to the lower corner of the windshield furthest removed
1670 from the driver's side of a nonconforming vehicle, a disclosure statement form which shall be

1671 readily visible from the exterior of the vehicle. The form shall be in the following configuration
1672 and shall state:

1673 "DISCLOSURE STATEMENT

1674 Vehicle Identification Number (VIN): _____

1675 Year: _____ Make: _____ Model: _____

1676 Prior Title Number: _____ State of Title: _____

1677 Odometer Reading: _____

1678 Warning: This motor vehicle was previously sold as new. It was subsequently alleged or found
1679 to have the following defect(s), malfunction(s), or conditions:

- 1680 1.
- 1681 2.
- 1682 3.
- 1683 4.
- 1684 5.

"

1685 THIS DISCLOSURE MUST BE GIVEN BY THE SELLER TO THE BUYER EVERY
1686 TIME THIS VEHICLE IS RESOLD

1687 (b) The disclosure statement shall be at least 4-1/2 inches wide and 5 inches long.

1688 (c) The heading shall be boldface type in capital letters not smaller than 18 point in size
1689 and the body copy shall be regular or medium face type not smaller than 12 point in size.

1690 (d) Each nonconformity shall be listed separately on a numbered line.

1691 (e) The motor vehicle and title identification information must be inserted in the spaces
1692 provided.

1693 Section 30. Section **41-12a-305** is amended to read:

1694 **41-12a-305. Assigned risk plan.**

1695 Section 31A-22-310 applies to an assigned risk plan. This continues the assigned risk
1696 plan established under [~~former Section 41-12-35~~] Chapter 242, Laws of Utah 1985, with any
1697 modifications from Title 31A, Insurance Code.

1698 Section 31. Section **41-22-29** is amended to read:

1699 **41-22-29. Operation by persons under eight years of age prohibited -- Definitions**
1700 **-- Exception -- Penalty.**

1701 (1) As used in this section:

1702 (a) "Organized practice" means a scheduled motorcycle practice held in an off-road
1703 vehicle facility designated by the division and conducted by an organization carrying liability
1704 insurance in at least the amounts specified by the division under Subsection (5) covering all
1705 activities associated with the practice.

1706 (b) "Sanctioned race" means a motorcycle race conducted on a closed course and
1707 sponsored and sanctioned by an organization carrying liability insurance in at least the amounts
1708 specified by the division under Subsection (5) covering all activities associated with the race.

1709 (2) Except as provided under Subsection (3), a person under eight years of age may not
1710 operate and an owner may not give another person who is under eight years of age permission
1711 to operate an off-highway vehicle on any public land, trail, street, or highway of this state.

1712 (3) A child under eight years of age may participate in a sanctioned race or organized
1713 practice if:

1714 (a) the child is under the immediate supervision of an adult;

1715 (b) ~~[advanced life support]~~ emergency medical service personnel, as defined in Section
1716 ~~[26-8-2]~~ 26-8a-102, are on the premises and immediately available to provide assistance at all
1717 times during the sanctioned race or organized practice; and

1718 (c) an ambulance ~~[service]~~ provider, as defined in Section ~~[26-8-2]~~ 26-8a-102, is on the
1719 premises and immediately available to provide assistance for a sanctioned race.

1720 (4) Any person convicted of a violation of this section is guilty of an infraction and
1721 shall be fined not more than \$50 per offense.

1722 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1723 division shall make rules specifying the minimum amounts of liability coverage for an
1724 organized practice or sanctioned race.

1725 Section 32. Section **49-12-203** is amended to read:

1726 **49-12-203. Exclusions from membership in system.**

1727 (1) The following employees are not eligible for service credit in this system:

1728 (a) An employee whose employment status is temporary in nature due to the nature or
1729 the type of work to be performed, provided that:

1730 (i) if the term of employment exceeds six months and the employee otherwise qualifies
1731 for service credit in this system, the participating employer shall report and certify to the office
1732 that the employee is a regular full-time employee effective the beginning of the seventh month

1733 of employment; or

1734 (ii) if an employee, previously terminated prior to being eligible for service credit in
1735 this system is reemployed within three months of termination by the same participating
1736 employer, the participating employer shall report and certify that the member is a regular
1737 full-time employee when the total of the periods of employment equals six months and the
1738 employee otherwise qualifies for service credit in this system.

1739 (b) (i) A current or future employee of a two-year or four-year college or university
1740 who holds, or is entitled to hold, under Section 49-12-204, a retirement annuity contract with
1741 the Teachers' Insurance and Annuity Association of America or with any other public or private
1742 system, organization, or company during any period in which required contributions based on
1743 compensation have been paid on behalf of the employee by the employer.

1744 (ii) The employee, upon cessation of the participating employer contributions, shall
1745 immediately become eligible for service credit in this system.

1746 (c) An employee serving as an exchange employee from outside the state.

1747 (d) An executive department head of the state, a member of the State Tax Commission,
1748 the Public Service Commission, and a member of a full-time or part-time board or commission
1749 who files a formal request for exemption.

1750 (e) An employee of the Department of Workforce Services who is covered under
1751 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

1752 (2) Upon filing a written request for exemption with the office, the following
1753 employees shall be exempt from coverage under this system:

1754 (a) a full-time student or the spouse of a full-time student and individuals employed in
1755 a trainee relationship;

1756 (b) an elected official;

1757 (c) an executive department head of the state or a legislative director, senior executive
1758 employed by the governor's office, a member of the State Tax Commission, a member of the
1759 Public Service Commission, and a member of a full-time or part-time board or commission;

1760 (d) an at-will employee who:

1761 (i) is a person appointed by the speaker of the House of Representatives, the House of
1762 Representatives minority leader, the president of the Senate, or the Senate minority leader; or

1763 (ii) is an employee of the Governor's Office of Economic Development who has been

1764 hired directly from a position not covered by a system; and

1765 (e) a person appointed as a city manager or chief city administrator or another person
1766 employed by a municipality, county, or other political subdivision, who is not entitled to merit
1767 or civil service protection.

1768 (3) (a) Each participating employer shall prepare a list designating those positions
1769 eligible for exemption under Subsection (2).

1770 (b) An employee may not be exempted unless ~~[they are]~~ the employee is employed in a
1771 position designated by the participating employer.

1772 (4) (a) In accordance with this section, a municipality, county, or political subdivision
1773 may not exempt more than 50 positions or a number equal to 10% of the employees of the
1774 municipality, county, or political subdivision whichever is lesser.

1775 (b) A municipality, county, or political subdivision may exempt at least one regular
1776 full-time employee.

1777 (5) Each participating employer shall:

1778 (a) file employee exemptions annually with the office; and

1779 (b) update the employee exemptions in the event of any change.

1780 (6) The office may make rules to implement this section.

1781 Section 33. Section **49-12-402** is amended to read:

1782 **49-12-402. Service retirement plans -- Calculation of retirement allowance --**
1783 **Social Security limitations.**

1784 (1) (a) Except as provided under Section 49-12-701, retirees of this system may choose
1785 from the six retirement options described in this section.

1786 (b) Options Two, Three, Four, Five, and Six are modifications of the Option One
1787 calculation.

1788 (2) The Option One benefit is an annual allowance calculated as follows:

1789 (a) If the retiree is at least 65 years of age or has accrued at least 30 years of service
1790 credit, the allowance is:

1791 (i) an amount equal to 1.25% of the retiree's final average monthly salary multiplied by
1792 the number of years of service credit accrued prior to July 1, 1975; plus

1793 (ii) an amount equal to 2% of the retiree's final average monthly salary multiplied by
1794 the number of years of service credit accrued on and after July 1, 1975.

1795 (b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for
1796 each year of retirement from age 60 to age 65, unless the member has 30 or more years of
1797 accrued credit in which event no reduction is made to the allowance.

1798 (c) (i) Years of service includes any fractions of years of service to which the retiree
1799 may be entitled.

1800 (ii) At the time of retirement, if a retiree's combined years of actual, not purchased,
1801 service credit is within 1/10 of one year of the total years of service credit required for
1802 retirement, the retiree shall be considered to have the total years of service credit required for
1803 retirement.

1804 (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated
1805 by reducing an Option One benefit based on actuarial computations to provide the following:

1806 (a) Option Two is a reduced allowance paid to and throughout the lifetime of the
1807 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's
1808 member contributions, the remaining balance of the retiree's member contributions shall be
1809 paid in accordance with Sections 49-11-609 and 49-11-610.

1810 (b) Option Three is a reduced allowance paid to and throughout the lifetime of the
1811 retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout
1812 the lifetime of the retiree's lawful spouse at the time of retirement.

1813 (c) Option Four is a reduced allowance paid to and throughout the lifetime of the
1814 retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid
1815 to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

1816 (d) Option Five is a modification of Option Three so that if the lawful spouse at the
1817 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the
1818 time of initial retirement under Option One shall be paid to the retiree for the remainder of the
1819 retiree's life, beginning on the last day of the month following the month in which the lawful
1820 spouse dies.

1821 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time
1822 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time
1823 of initial retirement under Option One shall be paid to the retiree for the remainder of the
1824 retiree's life, beginning on the last day of the month following the month in which the lawful
1825 spouse dies.

1826 (4) (a) (i) The final average salary is limited in the computation of that part of an
1827 allowance based on service rendered prior to July 1, 1967, during a period when the retiree
1828 received employer contributions on a portion of compensation from an educational institution
1829 toward the payment of the premium required on a retirement annuity contract with the
1830 Teachers' Insurance and Annuity Association of America or with any other public or private
1831 system, organization, or company to \$4,800.

1832 (ii) This limitation is not applicable to retirees who elected to continue in ~~the~~ this
1833 system by July 1, 1967.

1834 (b) Periods of employment which are exempt from this system under Subsection
1835 49-12-203(1)(b), may be purchased by the member for the purpose of retirement only if all
1836 benefits from the Teachers' Insurance and Annuity Association of America or any other public
1837 or private system or organization based on this period of employment are forfeited.

1838 (5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement
1839 date, the retirement is canceled and the death shall be considered as that of a member before
1840 retirement.

1841 (b) Any payments made to the retiree shall be deducted from the amounts due to the
1842 beneficiary.

1843 (6) If a retiree retires under either Option Five or Six and subsequently divorces, the
1844 retiree may elect to convert the benefit to a Option One benefit at the time of divorce, if there is
1845 no court order filed in the matter.

1846 Section 34. Section **49-13-203** is amended to read:

1847 **49-13-203. Exclusions from membership in system.**

1848 (1) The following employees are not eligible for service credit in this system:

1849 (a) An employee whose employment status is temporary in nature due to the nature or
1850 the type of work to be performed, provided that:

1851 (i) if the term of employment exceeds six months and the employee otherwise qualifies
1852 for service credit in this system, the participating employer shall report and certify to the office
1853 that the employee is a regular full-time employee effective the beginning of the seventh month
1854 of employment; and

1855 (ii) if an employee, previously terminated prior to becoming eligible for service credit
1856 in this system, is reemployed within three months of termination by the same participating

1857 employer, the participating employer shall report and certify to the office that the member is a
1858 regular full-time employee when the total of the periods of employment equals six months and
1859 the employee otherwise qualifies for service credit in this system.

1860 (b) (i) A current or future employee of a two-year or four-year college or university
1861 who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract with
1862 the Teachers' Insurance and Annuity Association of America or with any other public or private
1863 system, organization, or company during any period in which required contributions based on
1864 compensation have been paid on behalf of the employee by the employer.

1865 (ii) The employee, upon cessation of the participating employer contributions, shall
1866 immediately become eligible for service credit in this system.

1867 (c) An employee serving as an exchange employee from outside the state.

1868 (d) An executive department head of the state or a legislative director, senior executive
1869 employed by the governor's office, a member of the State Tax Commission, a member of the
1870 Public Service Commission, and a member of a full-time or part-time board or commission
1871 who files a formal request for exemption.

1872 (e) An employee of the Department of Workforce Services who is covered under
1873 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

1874 (2) Upon filing a written request for exemption with the office, the following
1875 employees shall be exempt from coverage under this system:

1876 (a) a full-time student or the spouse of a full-time student and individuals employed in
1877 a trainee relationship;

1878 (b) an elected official;

1879 (c) an executive department head of the state or a legislative director, senior executive
1880 employed by the governor's office, a member of the State Tax Commission, a member of the
1881 Public Service Commission, and a member of a full-time or part-time board or commission;

1882 (d) an at-will employee who:

1883 (i) is a person appointed by the speaker of the House of Representatives, the House of
1884 Representatives minority leader, the president of the Senate, or the Senate minority leader; or

1885 (ii) is an employee of the Governor's Office of Economic Development who has been
1886 hired directly from a position not covered by a system; and

1887 (e) a person appointed as a city manager or chief city administrator or another person

1888 employed by a municipality, county, or other political subdivision, who is not entitled to merit
1889 or civil service protection.

1890 (3) (a) Each participating employer shall prepare a list designating those positions
1891 eligible for exemption under Subsection (2).

1892 (b) An employee may not be exempted unless ~~[they are]~~ the employee is employed in a
1893 position designated by the participating employer.

1894 (4) (a) In accordance with this section, a municipality, county, or political subdivision
1895 may not exempt more than 50 positions or a number equal to 10% of the employees of the
1896 municipality, county, or political subdivision, whichever is lesser.

1897 (b) A municipality, county, or political subdivision may exempt at least one regular
1898 full-time employee.

1899 (5) Each participating employer shall:

1900 (a) file employee exemptions annually with the office; and

1901 (b) update the employee exemptions in the event of any change.

1902 (6) The office may make rules to implement this section.

1903 Section 35. Section **53A-1-706** is amended to read:

1904 **53A-1-706. Purchases of educational technology.**

1905 (1) (a) A school district or college of education shall comply with Title 63, Chapter 56,
1906 Utah Procurement Code, in purchasing technology, except as otherwise provided in Subsection
1907 (1)(b).

1908 (b) A school district may purchase computers from, and contract for the repair or
1909 refurbishing of computers with, the Utah Correctional Industries without going through the
1910 bidding or competition procedures outlined in Title 63, Chapter 56, Part ~~[D]~~ 4, Source
1911 ~~[Selection]~~ Selections and Contract Formation.

1912 (2) A school district or college of education may purchase technology through
1913 cooperative purchasing contracts administered by the state Division of Purchasing or through
1914 its own established purchasing program.

1915 Section 36. Section **53A-2-120** is amended to read:

1916 **53A-2-120. Transfer of school property to new school district.**

1917 (1) (a) On the July 1 following the school board elections for the new and existing
1918 districts as provided in Section ~~[53A-1-119]~~ 53A-2-119, the board of the existing district shall

1919 convey and deliver to the board of the new district all school property which the new district is
1920 entitled to receive.

1921 (b) Any disagreements as to the disposition of school property shall be resolved by the
1922 county legislative body.

1923 (2) Title vests in the new school board, including all rights, claims, and causes of
1924 action to or for the property, for the use or the income from the property, for conversion,
1925 disposition, or withholding of the property, or for any damage or injury to the property.

1926 (3) The new school board may bring and maintain actions to recover, protect, and
1927 preserve the property and rights of the district's schools and to enforce contracts.

1928 (4) The intangible property of the existing school district shall be prorated between it
1929 and the new district on the same basis used to determine the new district's proportionate share
1930 of the existing district's indebtedness under Section 53A-2-121.

1931 Section 37. Section **53A-2-213** is amended to read:

1932 **53A-2-213. Intradistrict options.**

1933 (1) (a) A local school board shall allow students who reside within the district to attend
1934 any school within the district, subject to the same requirements established in Sections
1935 53A-2-207 through [209] 53A-2-209, except that a district may adopt a later date for accepting
1936 intradistrict transfer applications.

1937 (b) If a board extends the date for acceptance of applications, then the notification
1938 dates shall be adjusted accordingly.

1939 (c) (i) In adjusting school boundaries, a local school board shall strive to avoid
1940 requiring current students to change schools and shall, to the extent reasonably feasible,
1941 accommodate parents who wish to avoid having their children attend different schools of the
1942 same level because of boundary changes which occur after one or more children in the family
1943 begin attending one of the affected schools.

1944 (ii) In granting interdistrict and intradistrict transfers to a particular school, the local
1945 school board shall take into consideration the fact that an applicant's brother or sister is
1946 attending the school or another school within the district.

1947 (2) (a) A district shall receive transportation monies under Sections 53A-17a-126 and
1948 53A-17a-127 for resident students who enroll in schools other than the regularly assigned
1949 school on the basis of the distance from the student's residence to the school the student would

1950 have attended had the intradistrict attendance option not been used.

1951 (b) The parent or guardian of the student shall arrange for the student's transportation to
1952 and from school, except that the district shall provide transportation on the basis of available
1953 space on an approved route within the district to the school of the student's attendance if the
1954 student would be otherwise eligible for transportation to the same school from that point on the
1955 bus route and the student's presence does not increase the cost of the bus route.

1956 Section 38. Section **53A-8-105** is amended to read:

1957 **53A-8-105. Hearings before district board or hearing officers -- Rights of**
1958 **employee -- Subpoenas -- Appeals.**

1959 (1) (a) Hearings are held under this chapter before the board or before hearing officers
1960 selected by the board to conduct the hearings and make recommendations concerning findings.

1961 (b) The board shall establish procedures to appoint hearing officers.

1962 (c) The board may delegate its authority to a hearing officer to make decisions relating
1963 to the employment of an employee which are binding upon both the employee and the board.

1964 (d) This Subsection (1) does not limit the right of the board or the employee to appeal
1965 to an appropriate court of law.

1966 (2) At the hearings, an employee has the right to counsel, to produce witnesses, to hear
1967 testimony against the employee, to cross-examine witnesses, and to examine documentary
1968 evidence.

1969 (3) Subpoenas may be issued and oaths administered as provided under Section
1970 [~~53A-7-204~~] 53A-6-603.

1971 Section 39. Section **53A-17a-107** is amended to read:

1972 **53A-17a-107. Professional staff weighted pupil units.**

1973 (1) Professional staff weighted pupil units are computed and distributed in accordance
1974 with the following schedule:

1975 (a) Professional Staff Cost Formula

		Bachelor's	Bachelor's	Master's	Master's	
	Years of	Degree	+30 Qt. Hr.	Degree	+45 Qt. Hr.	Doctorate
	Experience					
1977						
1978						
1979	1	1.00	1.05	1.10	1.15	1.20
1980	2	1.05	1.10	1.15	1.20	1.25

1981	3	1.10	1.15	1.20	1.25	1.30
1982	4	1.15	1.20	1.25	1.30	1.35
1983	5	1.20	1.25	1.30	1.35	1.40
1984	6	1.25	1.30	1.35	1.40	1.45
1985	7	1.30	1.35	1.40	1.45	1.50
1986	8	1.35	1.40	1.45	1.50	1.55
1987	9			1.50	1.55	1.60
1988	10				1.60	1.65
1989	11					1.70

1990 (b) Multiply the number of full-time or equivalent professional personnel in each
1991 applicable experience category in Subsection (1)(a) by the applicable weighting factor.

1992 (c) Divide the total of Subsection (1)(b) by the number of professional personnel
1993 included in Subsection (1)(b) and reduce the quotient by 1.00.

1994 (d) Multiply the result of Subsection (1)(c) by 1/4 of the weighted pupil units computed
1995 in accordance with Sections 53A-17a-106 and 53A-17a-109.

1996 (2) The State Board of Education shall enact rules in accordance with Title 63, Chapter
1997 46a, Utah Administrative Rulemaking Act, which require a certain percentage of a district's
1998 professional staff to be certified in the area in which they teach in order for the district to
1999 receive full funding under the schedule.

2000 (3) If an individual's teaching experience is a factor in negotiating a contract of
2001 employment to teach in the state's public schools, then the local school board is encouraged to
2002 accept as credited experience all of the years the individual has taught in the state's public
2003 schools.

2004 Section 40. Section **53A-28-401** is amended to read:

2005 **53A-28-401. Backup liquidity arrangements -- Issuance of notes.**

2006 (1) (a) If, at the time the state is required to make a debt service payment under its
2007 guaranty on behalf of a board, sufficient monies of the state are not on hand and available for
2008 that purpose, the state treasurer may:

2009 (i) seek a loan from the Permanent School Fund sufficient to make the required
2010 payment; or

2011 (ii) issue state debt as provided in Subsection (2).

2012 (b) Nothing in this Subsection (1) requires the Permanent School Fund to lend monies
2013 to the state treasurer.

2014 (2) (a) The state treasurer may issue state debt in the form of general obligation notes
2015 to meet its obligations under this chapter.

2016 (b) The amount of notes issued may not exceed the amount necessary to make payment
2017 on all bonds with respect to which the notes are issued plus all costs of issuance, sale, and
2018 delivery of the notes, rounded up to the nearest natural multiple of \$5,000.

2019 (c) Each series of notes issued may not mature later than 18 months from the date the
2020 notes are issued.

2021 (d) Notes issued may be refunded using the procedures set forth in this chapter for the
2022 issuance of notes, in an amount not more than the amount necessary to pay principal of and
2023 accrued but unpaid interest on any refunded notes plus all costs of issuance, sale, and delivery
2024 of the refunding notes, rounded up to the nearest natural multiple of \$5,000.

2025 (e) Each series of refunding notes may not mature later than 18 months from the date
2026 the refunding notes are issued.

2027 (3) (a) Before issuing or selling any general obligation note to other than a state fund or
2028 account, the state treasurer shall:

2029 (i) prepare a written plan of financing; and

2030 (ii) file it with the governor.

2031 (b) The plan of financing shall provide for:

2032 (i) the terms and conditions under which the notes will be issued, sold, and delivered;

2033 (ii) the taxes or revenues to be anticipated;

2034 (iii) the maximum amount of notes that may be outstanding at any one time under the
2035 plan of financing;

2036 (iv) the sources of payment of the notes;

2037 (v) the rate or rates of interest, if any, on the notes or a method, formula, or index under
2038 which the interest rate or rates on the notes may be determined during the time the notes are
2039 outstanding; and

2040 (vi) all other details relating to the issuance, sale, and delivery of the notes.

2041 [~~(d)~~] (c) In identifying the taxes or revenues to be anticipated and the sources of
2042 payment of the notes in the financing plan, the state treasurer may include:

- 2043 (i) the taxes authorized by Section 53A-28-402;
- 2044 (ii) the intercepted revenues authorized by Section 53A-28-302;
- 2045 (iii) the proceeds of refunding notes; or
- 2046 (iv) any combination of Subsections ~~(3)(c)~~(i), (ii), and (iii).
- 2047 ~~(e)~~ (d) The state treasurer may include in the plan of financing the terms and
- 2048 conditions of arrangements entered into by the state treasurer on behalf of the state with
- 2049 financial and other institutions for letters of credit, standby letters of credit, reimbursement
- 2050 agreements, and remarketing, indexing, and tender agent agreements to secure the notes,
- 2051 including payment from any legally available source of fees, charges, or other amounts coming
- 2052 due under the agreements entered into by the state treasurer.
- 2053 ~~(f)~~ (e) When issuing the notes, the state treasurer shall issue an order setting forth the
- 2054 interest, form, manner of execution, payment, manner of sale, prices at, above, or below face
- 2055 value, and all details of issuance of the notes.
- 2056 ~~(g)~~ (f) The order and the details set forth in the order shall conform with any
- 2057 applicable plan of financing and with this chapter.
- 2058 ~~(h)~~ (g) (i) Each note shall recite that it is a valid obligation of the state and that the
- 2059 full faith, credit, and resources of the state are pledged for the payment of the principal of and
- 2060 interest on the note from the taxes or revenues identified in accordance with its terms and the
- 2061 constitution and laws of Utah.
- 2062 (ii) These general obligation notes do not constitute debt of the state for the purposes of
- 2063 the 1.5% debt limitation of the Utah Constitution, Article XIV, Section 1.
- 2064 ~~(i)~~ (h) Immediately upon the completion of any sale of notes, the state treasurer shall:
- 2065 (i) make a verified return of the sale to the state auditor, specifying the amount of notes
- 2066 sold, the persons to whom the notes were sold, and the price, terms, and conditions of the sale;
- 2067 and
- 2068 (ii) credit the proceeds of sale, other than accrued interest and amounts required to pay
- 2069 costs of issuance of the notes, to the General Fund to be applied to the purpose for which the
- 2070 notes were issued.
- 2071 Section 41. Section **53B-8a-108** is amended to read:
- 2072 **53B-8a-108. Cancellation of agreements.**
- 2073 (1) Any account owner may cancel an account agreement at will.

2074 (2) If an account agreement is cancelled by the account owner, the current account
2075 balance shall be disbursed to the account owner less:

2076 (a) an administrative refund fee, which may be charged by the trust, except as provided
2077 in Subsection (3); and

2078 (b) any penalty or tax required to be withheld by the Internal Revenue Code.

2079 (3) An administration refund fee may not be levied by the trust if the account
2080 agreement is cancelled due to:

2081 (a) the death of the beneficiary; or

2082 (b) the permanent disability or mental incapacity of the beneficiary.

2083 (4) The board shall make rules for the disposition of monies transferred to an account
2084 pursuant to Subsection [~~53A-8a-107~~] 53B-8a-107(2)(c)(ii) and the earnings on those monies
2085 when an account agreement is cancelled.

2086 Section 42. Section **53C-1-201** is amended to read:

2087 **53C-1-201. Creation of administration -- Purpose -- Director.**

2088 (1) (a) There is established within state government the School and Institutional Trust
2089 Lands Administration.

2090 (b) The administration shall manage all school and institutional trust lands and assets
2091 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
2092 of Revenue from Trust Lands, and [~~Section 51-7-12~~] Sections 51-7a-201 and 51-7a-202.

2093 (2) The administration is an independent state agency and not a division of any other
2094 department.

2095 (3) (a) It is subject to the usual legislative and executive department controls except as
2096 provided in this Subsection (3).

2097 (b) (i) The director may make rules as approved by the board that allow the
2098 administration to classify a business proposal submitted to the administration as protected
2099 under Section 63-2-304, for as long as is necessary to evaluate the proposal.

2100 (ii) The administration shall return the proposal to the party who submitted the
2101 proposal, and incur no further duties under Title 63, Chapter 2, Government Records Access
2102 and Management Act, if the administration determines not to proceed with the proposal.

2103 (iii) The administration shall classify the proposal pursuant to law if it decides to
2104 proceed with the proposal.

2105 (iv) Section 63-2-403 does not apply during the review period.

2106 (c) The director shall make rules in compliance with Title 63, Chapter 46a, Utah
2107 Administrative Rulemaking Act, except that the director, with the board's approval, may
2108 establish a procedure for the expedited approval of rules, based on written findings by the
2109 director showing:

2110 (i) the changes in business opportunities affecting the assets of the trust;

2111 (ii) the specific business opportunity arising out of those changes which may be lost
2112 without the rule or changes to the rule;

2113 (iii) the reasons the normal procedures under Section 63-46a-4 cannot be met without
2114 causing the loss of the specific opportunity;

2115 (iv) approval by at least five board members; and

2116 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
2117 reasons and justifications for its findings, with the Division of Administrative Rules and
2118 notified interested parties as provided in Subsection 63-46a-4(8).

2119 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
2120 Management Act, except as provided in this Subsection (3)(d).

2121 (ii) The board may approve, upon recommendation of the director, that exemption for
2122 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
2123 the administration to efficiently fulfill its responsibilities under the law. The director shall
2124 consult with the executive director of the Department of Human Resource Management prior
2125 to making such a recommendation.

2126 (iii) The positions of director, deputy director, associate director, assistant director,
2127 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
2128 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

2129 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
2130 after consultation with the executive director of the Department of Human Resource
2131 Management, within ranges approved by the board. The board and director shall consider
2132 salaries for similar positions in private enterprise and other public employment when setting
2133 salary ranges.

2134 (v) The board may create an annual incentive and bonus plan for the director and other
2135 administration employees designated by the board, based upon the attainment of financial

2136 performance goals and other measurable criteria defined and budgeted in advance by the board.

2137 (e) The administration shall comply with Title 63, Chapter 56, Utah Procurement
2138 Code, except where the board approves, upon recommendation of the director, exemption from
2139 the Utah Procurement Code, and simultaneous adoption of rules under Title 63, Chapter 46a,
2140 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
2141 efficiently fulfill its responsibilities under the law.

2142 (f) (i) The board and director shall review the exceptions under this Subsection (3) and
2143 make recommendations for any modification, if required, which the Legislature would be asked
2144 to consider during its annual general session.

2145 (ii) The board and director may include in their recommendations any other proposed
2146 exceptions from the usual executive and legislative controls the board and director consider
2147 necessary to accomplish the purpose of this title.

2148 (4) The administration is managed by a director of school and institutional trust lands
2149 appointed by a majority vote of the board of trustees with the consent of the governor.

2150 (5) (a) The board of trustees shall provide policies for the management of the
2151 administration and for the management of trust lands and assets.

2152 (b) The board shall provide policies for the ownership and control of Native American
2153 remains that are discovered or excavated on school and institutional trust lands in consultation
2154 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
2155 Native American Grave Protection and Repatriation Act. The director may make rules in
2156 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement
2157 policies provided by the board regarding Native American remains.

2158 (6) In connection with joint ventures for the development of trust lands and minerals
2159 approved by the board under Sections 53C-1-303 and 53C-2-401, the administration may
2160 become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised
2161 Limited Liability Company Act, and is considered a person under Section 48-2c-102.

2162 Section 43. **54-1-3** is amended to read:

2163 **54-1-3. Transaction of business by commissioners -- Quorum -- Proceedings by**
2164 **less than majority or administrative law judge -- Effect of actions.**

2165 (1) A majority of the commissioners shall constitute a quorum for the transaction of
2166 any business, for the performance of any duty or for the exercise of any power of the

2167 commission. Any action taken by a majority of the commission shall be [~~deemed~~] considered
 2168 the action of the commission. Any vacancy in the commission shall not impair the right of the
 2169 remaining commissioners to exercise all the powers of the commission so long as a majority of
 2170 the commission remains. The commission may hold hearings at any time or place within or
 2171 without the state.

2172 (2) (a) The following proceedings shall be heard by at least a majority of the
 2173 commissioners:

2174 [~~(a)~~] (i) general rate proceedings to establish rates for public utilities which have
 2175 annual revenues generated from Utah utility service in excess of \$200,000,000; or

2176 [~~(b)~~] (ii) any proceeding which the commission determines involves an issue of
 2177 significant public interest.

2178 (b) If a commission proceeding requiring a majority has commenced and the
 2179 unavoidable absence of one or more commissioners results in less than a majority being
 2180 available to continue the proceeding, the proceeding may continue before a single
 2181 commissioner or specified administrative law judge only upon agreement of the involved
 2182 public utility and, if it is a party, the Division of Public Utilities.

2183 (3) Any other investigation, inquiry, hearing or proceeding which the commission has
 2184 power to undertake may be conducted before less than a majority of the commission or before
 2185 an administrative law judge appointed by the commission.

2186 (4) All proceedings conducted before less than a majority of the commission or before
 2187 an administrative law judge shall be [~~deemed~~] considered proceedings of the commission and
 2188 the findings, orders, and decisions made by less than a majority of the commission or by an
 2189 administrative law judge, when approved and confirmed by the commission and filed in its
 2190 office, shall be [~~deemed~~] considered findings, orders, and decisions of the commission and
 2191 shall have the same effect as if originally made by the commission.

2192 Section 44. Section **54-4-8** is amended to read:

2193 **54-4-8. Improvements, extensions, repairs -- Regulations -- Apportioning costs.**

2194 [~~(1) Except as provided under Section 54-3-8.1:~~]

2195 (1) (a) [~~whenever~~] Whenever the commission shall find that additions, extensions,
 2196 repairs, or improvements to or changes in the existing plant, equipment, apparatus, facilities, or
 2197 other physical property of any public utility or of any two or more public utilities ought

2198 reasonably to be made, or that a new structure or structures ought to be erected to promote the
2199 security or convenience of its employees or the public or in any way to secure adequate service
2200 or facilities, the commission shall make and serve an order directing that such additions,
2201 extensions, repairs, improvements, or changes be made or such structure or structures be
2202 erected in the manner and within the time specified in the order~~;~~and].

2203 (b) ~~if~~ If any additions, extensions, repairs, improvements, or changes, or any new
2204 structure or structures which the commission has ordered to be erected, require joint action by
2205 two or more public utilities, the commission shall notify the public utilities that the additions,
2206 extensions, repairs, improvements, or changes, or new structure or structures have been ordered
2207 and shall be made at their joint cost; whereupon the public utilities shall have reasonable time
2208 as the commission may grant within which to agree upon the portion or division of cost of the
2209 additions, extensions, repairs, improvements, or changes or any new structure or structures
2210 which each shall bear.

2211 (2) If at the expiration of the time in Subsection (1)(b) the public utilities shall fail to
2212 file with the commission a statement that an agreement has been made for division or
2213 apportionment of the cost or expense of the additions, extensions, repairs, improvements, or
2214 changes, or of the new structure or structures, the commission shall have authority, after further
2215 hearing, to make an order fixing the proportion of the cost or expense to be borne by each
2216 public utility and the manner in which the cost or expense shall be paid or secured.

2217 Section 45. ~~54-8-24~~ is amended to read:

2218 **54-8-24. Payment to utilities -- Allowable costs.**

2219 (1) In determining the conversion costs included in the costs and feasibility report
2220 required by Section 54-8-7, the public utility corporations shall be entitled to amounts
2221 sufficient to repay them for the following, as computed and reflected by the uniform system of
2222 accounts approved by the Public Service Commission, Federal Communications Commission
2223 or Federal Power Commission:

2224 ~~(1)~~ (a) The original costs less depreciation taken of the existing overhead electric and
2225 communication facilities to be removed.

2226 ~~(2)~~ (b) The estimated costs of removing such overhead electric and communication
2227 facilities, less the salvage value of the facilities removed.

2228 ~~(3)~~ (c) If the estimated cost of constructing underground facilities exceeds the

2229 original cost of existing overhead electric and communication facilities, then the cost difference
2230 between the two.

2231 ~~[(4)]~~ (d) The cost of obtaining new easements when technical considerations make it
2232 reasonably necessary to utilize easements for the underground facilities different from those
2233 used for aboveground facilities, or where the pre-existing easements are insufficient for the
2234 underground facilities.

2235 (2) ~~[However, in the event the]~~ Notwithstanding Subsection (1), if conversion costs are
2236 included in tariffs, rules or regulations filed with or promulgated by the Public Service
2237 Commission such conversion costs shall be the costs included in the costs and feasibility
2238 report.

2239 Section 46. Section **54-9-103** is amended to read:

2240 **54-9-103. Public power entity authority regarding common facilities --**

2241 **Determination of needs -- Agreement requirements -- Ownership interest.**

2242 (1) (a) Notwithstanding Title 11, Chapter 13, Interlocal Cooperation Act, and
2243 Subsection 11-14-103~~[(2)(k)]~~(1)(b)(xi), and in addition to all other powers conferred on public
2244 power entities, a public power entity may:

2245 (i) plan, finance, construct, acquire, operate, own, and maintain an undivided interest in
2246 common facilities;

2247 (ii) participate in and enter into agreements with one or more public power entities or
2248 power utilities; and

2249 (iii) enter into contracts and agreements as may be necessary or appropriate for the
2250 joint planning, financing, construction, operation, ownership, or maintenance of common
2251 facilities.

2252 (b) (i) Before entering into an agreement providing for common facilities, the
2253 governing body of each public power entity shall determine the needs of the public power
2254 entity for electric power and energy based on engineering studies and reports.

2255 (ii) In determining the future electric power and energy requirements of a public power
2256 entity, the governing body shall consider:

2257 (A) the economies and efficiencies of scale to be achieved in constructing or acquiring
2258 common facilities for the generation and transmission of electric power and energy;

2259 (B) the public power entity's need for reserve and peaking capacity, and to meet

2260 obligations under pooling and reserve sharing agreements reasonably related to the needs of the
2261 public power entity for power and energy;

2262 (C) the estimated useful life of the common facilities;

2263 (D) the estimated time necessary for the planning, financing, construction, and
2264 acquisition of the common facilities and the estimated timing of the need for an additional
2265 power supply; and

2266 (E) the reliability and availability of existing or alternate power supply sources and the
2267 cost of those existing or alternate power supply sources.

2268 (2) (a) Each agreement providing for common facilities shall:

2269 (i) contain provisions not inconsistent with this chapter that the governing body of the
2270 public power entity determines to be in the interests of the public power entity, including:

2271 (A) the purposes of the agreement;

2272 (B) the duration of the agreement;

2273 (C) the method of appointing or employing the personnel necessary in connection with
2274 the common facilities;

2275 (D) the method of financing the common facilities, including the apportionment of
2276 costs of construction and operation;

2277 (E) the ownership interests of the owners in the common facilities and other property
2278 used or useful in connection with the common facilities and the procedures for disposition of
2279 the common facilities and other property when the agreement expires or is terminated or when
2280 the common facilities are abandoned, decommissioned, or dismantled;

2281 (F) any agreement of the parties prohibiting or restricting the alienation or partition of
2282 the undivided interests of an owner in the common facilities;

2283 (G) the construction and repair of the common facilities, including, if the parties agree,
2284 a determination that a power utility or public power entity may construct or repair the common
2285 facilities as agent for all parties to the agreement;

2286 (H) the administration, operation, and maintenance of the common facilities, including,
2287 if the parties agree, a determination that a power utility or public power entity may administer,
2288 operate, and maintain the common facilities as agent for all parties to the agreement;

2289 (I) the creation of a committee of representatives of the parties to the agreement;

2290 (J) if the parties agree, a provision that if any party defaults in the performance or

2291 discharge of its obligations with respect to the common facilities, the other parties may perform
2292 or assume, pro rata or otherwise, the obligations of the defaulting party and may, if the
2293 defaulting party fails to remedy the default, succeed to or require the disposition of the rights
2294 and interests of the defaulting party in the common facilities;

2295 (K) provisions for indemnification of construction, operation, and administration
2296 agents, for completion of construction, for handling emergencies, and for allocation of output
2297 of the common facilities among the parties to the agreement according to the ownership
2298 interests of the parties;

2299 (L) methods for amending and terminating the agreement; and

2300 (M) any other matter, not inconsistent with this chapter, determined by the parties to
2301 the agreement to be necessary and proper;

2302 (ii) clearly disclose the ownership interest of each party;

2303 (iii) provide for an equitable method of allocating operation, repair, and maintenance
2304 costs of the common facilities; and

2305 (iv) be approved or ratified by resolution of the governing body of the public power
2306 entity.

2307 (b) A provision under Subsection (2)(a)(i)(F) in an agreement providing for common
2308 facilities under this Subsection (2) is not subject to any law restricting covenants against
2309 alienation or partition.

2310 (c) Each committee created under Subsection (2)(a)(i)(I) in an agreement providing for
2311 common facilities under this Subsection (2) shall have the powers, not inconsistent with this
2312 chapter, regarding the construction and operation of the common facilities that the agreement
2313 provides.

2314 (d) (i) The ownership interest of a public power entity in the common facilities may not
2315 be less than the proportion of the funds or the value of property supplied by it for the
2316 acquisition, construction, and operation of the common facilities.

2317 (ii) Each public power entity shall own and control the same proportion of the
2318 electrical output from the common facilities as its ownership interest in them.

2319 (3) Notwithstanding any other provision of this chapter, an interlocal entity may not act
2320 in a manner inconsistent with any provision of the agreement under which it was created.

2321 Section 47. Section **57-1-31.5** is amended to read:

2322 **57-1-31.5. Accounting of costs and fees paid -- Disclosure.**

2323 (1) For purposes of this section, "compensation" means anything of economic value
2324 that is paid, loaned, granted, given, donated, or transferred to a trustee for or in consideration
2325 of:

- 2326 (a) services;
- 2327 (b) personal or real property; or
- 2328 (c) other thing of value.

2329 (2) If a trustee receives a request from the trustor for a statement as to the amount
2330 required to be paid to reinstate or payoff a loan, the trustee shall include with that statement:

2331 (a) a detailed listing of any of the following that the trustor would be required to pay to
2332 reinstate or payoff the loan:

- 2333 (i) attorney's fees;
- 2334 (ii) trustee fees; or
- 2335 (iii) any costs including:

- 2336 (A) title fees;
- 2337 (B) publication fees; or
- 2338 (C) posting fees; and

2339 (b) subject to Subsection (3), a disclosure of:

2340 (i) any relationship that the trustee has with a third party that provides services related
2341 to the foreclosure of the loan; and

2342 (ii) whether the relationship described in Subsection (2)(b)(i) is created by:

- 2343 (A) an ownership interest in the third party; or
- 2344 (B) contract or other agreement.

2345 (3) Subsection (2)(b) does not require a trustee to provide a trustor:

2346 [(†)] (a) a copy of any contract or agreement described in Subsection (2)(b);

2347 [(††)] (b) specific detail as to the nature of the ownership interest described in

2348 Subsection (2)(b); or

2349 [(†††)] (c) the amount of compensation the trustee receives related to the foreclosure of
2350 the loan under a relationship described in Subsection (2)(b).

2351 Section 48. Section **57-2a-4** is amended to read:

2352 **57-2a-4. Proof of authority -- Prima facie evidence.**

2353 (1) Except as provided in Subsections (2) and (3), the signature, title or rank, branch of
 2354 service, and serial number, if any, of any person described in [~~Subsections~~] Subsection
 2355 57-2a-3~~[(1) through (5)]~~ (2) are sufficient proof of his authority to perform a notarial act.
 2356 Further proof of his authority is not required.

2357 (2) Proof of the authority of a person to perform a notarial act under the laws or
 2358 regulations of a foreign country is sufficient if:

2359 (a) a foreign service officer of the United States resident in the country in which the act
 2360 is performed or a diplomatic or consular officer of the foreign country resident in the United
 2361 States certifies that a person holding that office is authorized to perform the act;

2362 (b) the official seal of the person performing the notarial act is affixed to the document;

2363 or

2364 (c) the title and indication of authority to perform notarial acts of the person appears
 2365 either in a digest of foreign law or in a list customarily used as a source of such information.

2366 (3) The signature and title or rank of the person performing the notarial act are prima
 2367 facie evidence that he is a person with the designated title and that his signature is genuine.

2368 Section 49. Section **57-2a-7** is amended to read:

2369 **57-2a-7. Form of acknowledgment.**

2370 (1) The form of acknowledgment set forth in this section, if properly completed, is
 2371 sufficient under any law of this state. It is known as "Statutory Short Form of
 2372 Acknowledgment." This section does not preclude the use of other forms.

2373 State of _____)

2374 _____) ss.

2375 County of _____)

2376 The foregoing instrument was acknowledged before me this (date) by (person
 2377 acknowledging, title or representative capacity, if any).

2378 _____
 2379 (Signature of Person Taking Acknowledgment)

2380 (Seal) (Title)

2381 My commission expires: Residing at:

2382 _____

2383 (2) The phrases "My commission expires" and "Residing at" may be omitted if this

2384 information is included in the notarial seal.

2385 Section 50. **57-12-2** is amended to read:

2386 **57-12-2. Declaration of policy.**

2387 (1) It is hereby declared to be the policy of this [~~act~~] chapter and of the state [~~of Utah~~],
2388 and the Legislature recognizes:

2389 [~~(1)~~] (a) that it is often necessary for the various agencies of state and local government
2390 to acquire land by condemnation;

2391 [~~(2)~~] (b) that persons, businesses, and farms are often uprooted and displaced by such
2392 action while being recompensed only for the value of land taken;

2393 [~~(3)~~] (c) that such displacement often works economic hardship on those least able to
2394 suffer the added and uncompensated costs of moving, locating new homes, business sites,
2395 farms, and other costs of being relocated;

2396 [~~(4)~~] (d) that such added expenses should reasonably be included as a part of the
2397 project cost and paid to those displaced;

2398 [~~(5)~~] (e) that the Congress of the United States has established matching grants for
2399 relocation assistance, and has also established uniform policies for land acquisition under the
2400 Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 42 U.S.C. 4601 et
2401 seq. to assist the states in meeting these expenses and assuring that land is fairly acquired; and

2402 [~~(6)~~] (f) that it is in the public interest for the state [~~of Utah~~] to provide for such
2403 payments and to establish such land acquisition policies.

2404 (2) Therefore, the purpose of this [~~act~~] chapter is to establish a uniform policy for the
2405 fair and equitable treatment of persons displaced by the acquisition of real property by state and
2406 local land acquisition programs, by building code enforcement activities, or by a program of
2407 voluntary rehabilitation of buildings or other improvements conducted pursuant to
2408 governmental supervision.

2409 (3) All of the provisions of the [~~act~~] chapter shall be liberally construed to put into
2410 effect the foregoing policies and purposes.

2411 Section 51. Section **57-12-14** is amended to read:

2412 **57-12-14. Dispute resolution -- Additional appraisal.**

2413 (1) If the agency and the private property owner or displaced person disagree on any
2414 issue arising out of this chapter, the private property owner may submit the dispute for

2415 mediation or arbitration according to the procedures and requirements of Section [63-34-13]
 2416 13-43-204.

2417 (2) (a) The private property owner or displaced person may request that the mediator or
 2418 arbitrator authorize an additional appraisal.

2419 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably
 2420 necessary to reach a resolution of the case, the mediator or arbitrator may:

2421 (i) have an additional appraisal of the property prepared by an independent appraiser;
 2422 and

2423 (ii) require the agency to pay the costs of the first additional appraisal.

2424 Section 52. **57-15-8.5** is amended to read:

2425 **57-15-8.5. Acceleration -- Conditions authorizing -- Exemption of loans sold to**
 2426 **federal agencies.**

2427 (1) Notwithstanding the provisions of Sections 57-15-2 and 57-15-4, a lender or
 2428 secured party may accelerate or mature an indebtedness upon assumption of that indebtedness
 2429 if:

2430 [(1)] (a) a written agreement with, or a written instrument executed by, the obligor on
 2431 the indebtedness allows the secured party or lender to accelerate or mature the indebtedness
 2432 and/or increase the interest rate thereon upon assumption of the indebtedness; [~~and~~]

2433 [(2)] (b) (i) the secured party or lender has offered to accept the assumption without
 2434 acceleration and without maturing the indebtedness provided the assumer agree to pay the
 2435 secured party or lender not more than a 1% assumption fee, a not more than 1% interest rate
 2436 increase effective as of the date of assumption, whichever is earlier, and a further not more than
 2437 1% interest rate increase effective a date five years after the date of assumption, whichever is
 2438 earlier[~~Neither of said~~]; and

2439 (ii) that neither of the interest rate increases in Subsection (1)(b)(i) may cause the total
 2440 interest rate on the indebtedness to exceed 1% below the weighted average yield of the Federal
 2441 Home Loan Mortgage Corporation weekly auction for purchases of mortgages secured by
 2442 residential 1 to 4 family dwellings in effect on the date of the increase; and

2443 [(3)] (c) the assumer has refused to consent to such assumption fee and interest rate
 2444 increases.

2445 (2) As used in this section, [~~the term~~] "obligor" [~~shall mean~~] means the original

2446 borrower or, if the secured party or lender has previously approved, and pursuant to that
2447 approval there has been effected, an assumption of the indebtedness, the person last approved
2448 as an assumer and who has assumed the indebtedness.

2449 (3) If a determination is made by the Federal National Mortgage Association or by the
2450 Federal Home Loan Mortgage Corporation that it will not purchase Utah mortgage loans
2451 because of the effects of this [aet] chapter, and such determination is communicated in writing
2452 to the Legislature or governor of this state, then this [aet] chapter will not apply, after receipt of
2453 such communication, to any mortgages originated after the effective date of this [aet] chapter
2454 and sold to the entity making such determination.

2455 Section 53. Section **58-13-2** is amended to read:

2456 **58-13-2. Emergency care rendered by licensee.**

2457 (1) A person licensed under Title 58, Occupations and Professions, to practice as any
2458 of the following health care professionals, who is under no legal duty to respond, and who in
2459 good faith renders emergency care at the scene of an emergency gratuitously and in good faith,
2460 is not liable for any civil damages as a result of any acts or omissions by the person in
2461 rendering the emergency care:

- 2462 (a) osteopathic physician;
 - 2463 (b) physician and surgeon;
 - 2464 (c) naturopathic physician;
 - 2465 (d) dentist or dental hygienist;
 - 2466 (e) chiropractic physician;
 - 2467 (f) physician assistant;
 - 2468 (g) optometrist;
 - 2469 (h) nurse licensed under Section 58-31b-301 or 58-31c-102;
 - 2470 (i) podiatrist;
 - 2471 (j) certified nurse midwife;
 - 2472 (k) respiratory [~~therapist~~] care practitioner;
 - 2473 (l) pharmacist, pharmacy technician, and pharmacy intern; or
 - 2474 (m) Direct-entry midwife licensed under Section 58-77-301.
- 2475 (2) This Subsection (2) applies to health care professionals:
- 2476 (a) (i) described in Subsection (1); and

2477 (ii) who are under no legal duty to respond to the circumstances described in
2478 Subsection (3); or
2479 (b) who are activated as a member of a medical reserve corps as described in Section
2480 26A-1-126 during the time of an emergency as provided in Section 26A-1-126; and
2481 (c) (i) who are acting within the scope of the health care professional's license, or
2482 within the scope of practice as modified under Subsection 58-1-307(4) or Section 26A-1-126;
2483 and
2484 (ii) who are acting in good faith without compensation or remuneration as defined in
2485 Subsection 58-13-3(2).
2486 (3) A health care professional described in Subsection (2) is not liable for any civil
2487 damages as a result of any acts or omissions by the health care professional in rendering care as
2488 a result of:
2489 (a) implementation of measures to control the causes of epidemic and communicable
2490 diseases and other conditions significantly affecting the public health or necessary to protect
2491 the public health as set out in Title 26A, Chapter 1, Local Health Departments;
2492 (b) investigating and controlling suspected bioterrorism and disease as set out in Title
2493 26, Chapter 23b, Detection of Public Health Emergencies Act; and
2494 (c) responding to a national, state, or local emergency, a public health emergency as
2495 defined in Section 26-23b-102, or a declaration by the President of the United States or other
2496 federal official requesting public health-related activities.
2497 (4) The immunity in Subsection (3) is in addition to any immunity or protection in state
2498 or federal law that may apply.
2499 (5) For purposes of Subsection (2)(c)(ii) remuneration does not include:
2500 (a) food supplied to the volunteer;
2501 (b) clothing supplied to the volunteer to help identify the volunteer during the time of
2502 the emergency; or
2503 (c) other similar support for the volunteer.
2504 Section 54. Section **58-17b-504** is amended to read:
2505 **58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**
2506 (1) Any person who violates the unlawful conduct provision defined in Subsection
2507 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

2508 (2) Any person who violates the unlawful conduct provisions defined in Subsection
2509 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except
2510 Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

2511 (3) (a) Subject to Subsection (5), the division may assess administrative penalties in
2512 accordance with the provisions of Section 58-17b-401 for acts of unprofessional or unlawful
2513 conduct or any other appropriate administrative action in accordance with the provisions of
2514 Section 58-17b-401.

2515 (b) An administrative penalty imposed pursuant to this section shall be deposited in the
2516 General Fund as a dedicated credit to be used by the division for pharmacy licensee education
2517 and enforcement as provided in Section ~~[58-12b-505]~~ 58-17b-505.

2518 (4) If a licensee has been convicted of violating Section 58-17b-501 prior to an
2519 administrative finding of a violation of the same section, the licensee may not be assessed an
2520 administrative fine under this chapter for the same offense for which the conviction was
2521 obtained.

2522 (5) (a) If upon inspection or investigation, the division concludes that a person has
2523 violated the provisions of Section 58-17b-501, 58-17b-502, or Chapter 37, Utah Controlled
2524 Substances Act, or any rule or order issued with respect to these provisions, and that
2525 disciplinary action is appropriate, the director or the director's designee from within the
2526 division shall promptly issue a citation to the person according to this chapter and any pertinent
2527 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
2528 adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures
2529 Act.

2530 (b) Any person who is in violation of the provisions of Section 58-17b-501,
2531 58-17b-502, or Chapter 37, Utah Controlled Substances Act, or any rule or order issued with
2532 respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or
2533 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
2534 Subsection (5) of up to \$10,000 per single violation or up to \$2,000 per day of ongoing
2535 violation, whichever is greater, in accordance with a fine schedule established by rule, and
2536 may, in addition to or in lieu of, be ordered to cease and desist from violating the provisions of
2537 Section 58-17b-501, 58-17b-502, or Chapter 37, Utah Controlled Substances Act, or any rule
2538 or order issued with respect to these provisions.

2539 (c) Except for an administrative fine and a cease and desist order, the licensure
2540 sanctions cited in Section 58-17b-401 may not be assessed through a citation.

2541 (d) Each citation shall be in writing and specifically describe with particularity the
2542 nature of the violation, including a reference to the provision of the chapter, rule, or order
2543 alleged to have been violated. The citation shall clearly state that the recipient must notify the
2544 division in writing within 20 calendar days of service of the citation if the recipient wishes to
2545 contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative
2546 Procedures Act. The citation shall clearly explain the consequences of failure to timely contest
2547 the citation or to make payment of any fines assessed by the citation within the time specified
2548 in the citation.

2549 (e) Each citation issued under this section, or a copy of each citation, may be served
2550 upon any person whom a summons may be served:

2551 (i) in accordance with the Utah Rules of Civil Procedure;

2552 (ii) personally or upon the person's agent by a division investigator or by any person
2553 specially designated by the director; or

2554 (iii) by mail.

2555 (f) If within 20 calendar days from the service of a citation, the person to whom the
2556 citation was issued fails to request a hearing to contest the citation, the citation becomes the
2557 final order of the division and is not subject to further agency review. The period to contest the
2558 citation may be extended by the division for cause.

2559 (g) The division may refuse to issue or renew, suspend, revoke, or place on probation
2560 the license of a licensee who fails to comply with the citation after it becomes final.

2561 (h) The failure of an applicant for licensure to comply with a citation after it becomes
2562 final is a ground for denial of license.

2563 (i) No citation may be issued under this section after the expiration of six months
2564 following the occurrence of any violation.

2565 Section 55. Section **58-61-307** is amended to read:

2566 **58-61-307. Exemptions from licensure.**

2567 (1) Except as modified in Section 58-61-301, the exemptions from licensure in Section
2568 58-1-307 apply to this chapter.

2569 (2) In addition to the exemptions from licensure in Section 58-1-307, the following

2570 when practicing within the scope of the license held, may engage in acts included within the
2571 definition of practice as a psychologist, subject to the stated circumstances and limitations,
2572 without being licensed under this chapter:

2573 (a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah
2574 Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act; ~~and~~

2575 (b) a registered psychiatric mental health nurse specialist licensed under Chapter 31b,
2576 Nurse Practice Act;

2577 ~~(3)~~ (c) a recognized member of the clergy while functioning in his ministerial
2578 capacity as long as he does not represent himself as or use the title of psychologist;

2579 ~~(4)~~ (d) an individual who is offering expert testimony in any proceeding before a
2580 court, administrative hearing, deposition upon the order of any court or other body having
2581 power to order the deposition, or proceedings before any master, referee, or alternative dispute
2582 resolution provider;

2583 ~~(5)~~ (e) an individual engaged in performing hypnosis who is not licensed under this
2584 title in a profession which includes hypnosis in its scope of practice, and who:

2585 ~~(a)~~ (i) (A) induces a hypnotic state in a client for the purpose of increasing motivation
2586 or altering lifestyles or habits, such as eating or smoking, through hypnosis;

2587 ~~(ii)~~ (B) consults with a client to determine current motivation and behavior patterns;

2588 ~~(iii)~~ (C) prepares the client to enter hypnotic states by explaining how hypnosis works
2589 and what the client will experience;

2590 ~~(iv)~~ (D) tests clients to determine degrees of suggestibility;

2591 ~~(v)~~ (E) applies hypnotic techniques based on interpretation of consultation results and
2592 analysis of client's motivation and behavior patterns; and

2593 ~~(vi)~~ (F) trains clients in self-hypnosis conditioning;

2594 ~~(b)~~ (ii) may not:

2595 ~~(i)~~ (A) engage in the practice of mental health therapy;

2596 ~~(ii)~~ (B) represent himself using the title of a license classification in Subsection
2597 58-60-102(5); or

2598 ~~(iii)~~ (C) use hypnosis with or treat a medical, psychological, or dental condition
2599 defined in generally recognized diagnostic and statistical manuals of medical, psychological, or
2600 dental disorders;

2601 [(6)] (f) an individual's exemption from licensure under Subsection 58-1-307(1)(b)
 2602 terminates when the student's training is no longer supervised by qualified faculty or staff and
 2603 the activities are no longer a defined part of the degree program;

2604 [(7)] (g) an individual holding an earned doctoral degree in psychology who is
 2605 employed by an accredited institution of higher education and who conducts research and
 2606 teaches in that individual's professional field, but only if the individual does not engage in
 2607 providing delivery or supervision of professional services regulated under this chapter to
 2608 individuals or groups regardless of whether there is compensation for the services;

2609 [(8)] (h) any individual who was employed as a psychologist by a state, county, or
 2610 municipal agency or other political subdivision of the state prior to July 1, 1981, and who
 2611 subsequently has maintained employment as a psychologist in the same state, county, or
 2612 municipal agency or other political subdivision while engaged in the performance of his
 2613 official duties for that agency or political subdivision;

2614 [(9)] (i) an individual licensed as a school psychologist under Section 53A-6-104:

2615 [(a)] (i) may represent himself as and use the terms "school psychologist" or " licensed
 2616 school psychologist"; and

2617 [(b)] (ii) is restricted in his practice to employment within settings authorized by the
 2618 State Board of Education; and

2619 [(10)] (j) an individual providing advice or counsel to another individual in a setting of
 2620 their association as friends or relatives and in a nonprofessional and noncommercial
 2621 relationship, if there is no compensation paid for the advice or counsel.

2622 Section 56. Section **59-2-201** is amended to read:

2623 **59-2-201. Assessment by commission -- Determination of value of mining**
 2624 **property -- Notification of assessment -- Local assessment of property assessed by the**
 2625 **unitary method.**

2626 (1) By May 1 of each year the following property, unless otherwise exempt under the
 2627 Utah Constitution or under Part 11 [~~of this chapter~~], Exemptions, Deferrals, and Abatements,
 2628 shall be assessed by the commission at 100% of fair market value, as valued on January 1, in
 2629 accordance with this chapter:

2630 (a) except as provided in Subsection (2), all property which operates as a unit across
 2631 county lines, if the values must be apportioned among more than one county or state;

- 2632 (b) all property of public utilities;
- 2633 (c) all operating property of an airline, air charter service, and air contract service;
- 2634 (d) all geothermal fluids and geothermal resources;
- 2635 (e) all mines and mining claims except in cases, as determined by the commission,
- 2636 where the mining claims are used for other than mining purposes, in which case the value of
- 2637 mining claims used for other than mining purposes shall be assessed by the assessor of the
- 2638 county in which the mining claims are located; and

2639 (f) all machinery used in mining, all property or surface improvements upon or
2640 appurtenant to mines or mining claims. For the purposes of assessment and taxation, all
2641 processing plants, mills, reduction works, and smelters which are primarily used by the owner
2642 of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or
2643 mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual
2644 location.

2645 (2) The commission shall assess and collect property tax on state-assessed commercial
2646 vehicles at the time of original registration or annual renewal.

2647 (a) The commission shall assess and collect property tax annually on state-assessed
2648 commercial vehicles which are registered pursuant to Section 41-1a-222 or 41-1a-228.

2649 (b) State-assessed commercial vehicles brought into the state which are required to be
2650 registered in Utah shall, as a condition of registration, be subject to ad valorem tax unless all
2651 property taxes or fees imposed by the state of origin have been paid for the current calendar
2652 year.

2653 (c) Real property, improvements, equipment, fixtures, or other personal property in this
2654 state owned by the company shall be assessed separately by the local county assessor.

2655 (d) The commission shall adjust the value of state-assessed commercial vehicles as
2656 necessary to comply with [~~Title 49, Section 11503a of the United States Code~~] 49 U.S.C. Sec.
2657 14502, and the commission shall direct the county assessor to apply the same adjustment to any
2658 personal property, real property, or improvements owned by the company and used directly and
2659 exclusively in their commercial vehicle activities.

2660 (3) The method for determining the fair market value of productive mining property is
2661 the capitalized net revenue method or any other valuation method the commission believes, or
2662 the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of

2663 the fair market value of the mining property. The rate of capitalization applicable to mines
 2664 shall be determined by the commission, consistent with a fair rate of return expected by an
 2665 investor in light of that industry's current market, financial, and economic conditions. In no
 2666 event may the fair market value of the mining property be less than the fair market value of the
 2667 land, improvements, and tangible personal property upon or appurtenant to the mining
 2668 property.

2669 (4) Immediately following the assessment, the owner or operator of the assessed
 2670 property shall be notified of the assessment. The assessor of the county in which the property
 2671 is located shall also be immediately notified of the assessment.

2672 (5) Property assessed by the unitary method, which is not necessary to the conduct and
 2673 does not contribute to the income of the business as determined by the commission, shall be
 2674 assessed separately by the local county assessor.

2675 Section 57. Section **59-2-1108** is amended to read:

2676 **59-2-1108. Indigent persons -- Deferral of taxes -- Interest rate -- Treatment of**
 2677 **deferred taxes.**

2678 (1) (a) The county may, after giving notice, defer any tax levied on residential property,
 2679 subject to the conditions of Section 59-2-1109.

2680 (b) If the owner of the property described in Subsection (1)(a) is poor, the property may
 2681 not be subjected to a tax sale during the period of deferment.

2682 (2) (a) Taxes deferred by the county accumulate with interest as a lien against the
 2683 property until the property is sold or otherwise disposed of.

2684 (b) Deferred taxes under this section:

2685 (i) bear interest at an interest rate equal to the lesser of:

2686 (A) 6%; or

2687 (B) the [~~targeted~~] federal funds rate:

2688 (I) as defined in [~~12 C.F.R. Sec. 201.2~~] 31 C.F.R. Sec. 203.2; and

2689 (II) that exists on the January 1 immediately preceding the day on which the taxes are
 2690 deferred; and

2691 (ii) have the same status as a lien under Sections 59-2-1301 and 59-2-1325.

2692 (3) Deferral may be granted by the county at any time if:

2693 (a) the holder of any mortgage or trust deed outstanding on the property gives written

2694 approval of the application; and

2695 (b) the applicant is not the owner of income producing assets that could be liquidated
2696 to pay the tax.

2697 (4) Any assets transferred to relatives in the prior three-year period shall be considered
2698 by the county in making the county's determination.

2699 Section 58. Section **59-2-1302** is amended to read:

2700 **59-2-1302. Assessor or treasurer's duties -- Collection of uniform fees and taxes**
2701 **on personal property -- Unpaid tax on uniform fee is a lien -- Delinquency interest --**
2702 **Rate.**

2703 (1) After the assessor assesses taxes or uniform fees on personal property, the assessor
2704 or, if this duty has been reassigned in an ordinance under Section 17-16-5.5, the treasurer shall:

2705 (a) list the personal property tax or uniform fee as provided in Subsection (3) with the
2706 real property of the owner in the manner required by law if the assessor or treasurer, as the case
2707 may be, determines that the real property is sufficient to secure the payment of the personal
2708 property taxes or uniform fees;

2709 (b) immediately collect the taxes or uniform fees due on the personal property; or

2710 (c) on or before the day on which the tax or uniform fee on personal property is due,
2711 obtain from the taxpayer a bond that is:

2712 (i) payable to the county in an amount equal to the amount of the tax or uniform fee
2713 due, plus 20% of the amount of the tax or uniform fee due; and

2714 (ii) conditioned for the payment of the tax or uniform fee on or before November 30.

2715 (2) (a) An unpaid tax as defined in Section 59-1-705, or unpaid uniform fee upon
2716 personal property listed with the real property is a lien upon the owner's real property as of 12
2717 o'clock noon of January 1 of each year.

2718 (b) An unpaid tax as defined in Section 59-1-705, or unpaid uniform fee upon personal
2719 property not listed with the real property is a lien upon the owner's personal property as of 12
2720 o'clock noon of January 1 of each year.

2721 (3) The assessor or treasurer, as the case may be, shall make the listing under this
2722 section:

2723 (a) on the record of assessment of the real property; or

2724 (b) by entering a reference showing the record of the assessment of the personal

2725 property on the record of assessment of the real property.

2726 (4) (a) The amount of tax or uniform fee assessed upon personal property is delinquent
2727 if the tax or uniform fee is not paid within 30 days after the day on which the tax notice or the
2728 combined signed statement and tax notice due under Section 59-2-306 is mailed.

2729 (b) Delinquent taxes or uniform fees under Subsection (4)(a) shall bear interest from
2730 the date of delinquency until the day on which the delinquent tax or uniform fee is paid at an
2731 interest rate equal to the sum of:

2732 (i) 6%; and

2733 (ii) the [targeted] federal funds rate:

2734 (A) as defined in [~~12 C.F.R. Sec. 201.2~~] 31 C.F.R. Sec. 203.2; and

2735 (B) that exists on the January 1 immediately preceding the date of delinquency.

2736 Section 59. Section **59-2-1331** is amended to read:

2737 **59-2-1331. Date tax is delinquent -- Penalty -- Interest -- Payments -- Refund of**
2738 **prepayment.**

2739 (1) (a) Except as provided in Subsection (1)(b), all taxes, unless otherwise specifically
2740 provided for under Section 59-2-1332, or other law, unpaid or postmarked after November 30
2741 of each year following the date of levy, are delinquent, and the county treasurer shall close the
2742 treasurer's office for the posting of current year tax payments until a delinquent list has been
2743 prepared.

2744 (b) Notwithstanding Subsection (1)(a), if November 30 falls on a Saturday, Sunday, or
2745 holiday:

2746 (i) the date of the next following day that is not a Saturday, Sunday, or holiday shall be
2747 substituted in Subsection (1)(a) and Subsection 59-2-1332(1) for November 30; and

2748 (ii) the date of the day occurring 30 days after the date under Subsection (1)(b)(i) shall
2749 be substituted in Subsection 59-2-1332(1) for December 30.

2750 (2) (a) For each parcel, all delinquent taxes on each separately assessed parcel are
2751 subject to a penalty of 2% of the amount of the taxes or \$10, whichever is greater.

2752 (b) Unless the delinquent taxes, together with the penalty, are paid before January 16,
2753 the amount of taxes and penalty shall bear interest on a per annum basis from January 1
2754 following the delinquency date.

2755 (c) For purposes of Subsection (2)(b), the interest rate is equal to the sum of:

- 2756 (i) 6%; and
- 2757 (ii) the [targeted] federal funds rate:
- 2758 (A) as defined in [~~12 C.F.R. Sec. 201.2~~] 31 C.F.R. Sec. 203.2; and
- 2759 (B) that exists on the January 1 immediately following the date of delinquency.
- 2760 (3) If the delinquency exceeds one year, the amount of taxes and penalties for that year
- 2761 and all succeeding years shall bear interest until settled in full through redemption or tax sale.
- 2762 The interest rate to be applied shall be calculated for each year as established under Subsection
- 2763 (2) and shall apply on each individual year's delinquency until paid.
- 2764 (4) The county treasurer may accept and credit on account against taxes becoming due
- 2765 during the current year, at any time before or after the tax rates are adopted, but not subsequent
- 2766 to the date of delinquency, either:
- 2767 (a) payments in amounts of not less than \$10; or
- 2768 (b) the full amount of the unpaid tax.
- 2769 (5) (a) At any time before the county treasurer mails the tax notice described in Section
- 2770 59-2-1317, the county treasurer may refund amounts accepted and credited on account against
- 2771 taxes becoming due during the current year.
- 2772 (b) Upon recommendation by the county treasurer, the county legislative body shall
- 2773 adopt rules or ordinances to implement the provisions of this Subsection (5).
- 2774 Section 60. Section **59-2-1347** is amended to read:
- 2775 **59-2-1347. Redemption -- Adjustment or deferral of taxes -- Interest.**
- 2776 (1) (a) If any interested person applies to the county legislative body for an adjustment
- 2777 or deferral of taxes levied against property assessed by the county assessor, a sum less than the
- 2778 full amount due may be accepted, or the full amount may be deferred, where, in the judgment
- 2779 of the county legislative body, the best human interests and the interests of the state and the
- 2780 county are served. Nothing in this section prohibits the county legislative body from granting
- 2781 retroactive adjustments or deferrals if the criteria established in this Subsection (1) are met.
- 2782 (b) If any interested person applies to the commission for an adjustment of taxes levied
- 2783 against property assessed by the commission, a sum less than the full amount due may be
- 2784 accepted, where, in the judgment of the commission, the best human interests and the interests
- 2785 of the state and the county are served.
- 2786 (2) If an application is made, the applicant shall submit a statement, setting forth the

2787 following:

2788 (a) a description of the property;

2789 (b) the value of the property for the current year;

2790 (c) the amount of delinquent taxes, interest, and penalties;

2791 (d) the amount proposed to be paid in settlement or to be deferred; and

2792 (e) any other information required by the county legislative body.

2793 (3) (a) Blank forms for the application shall be prepared by the commission.

2794 (b) A deferral may not be granted without the written consent of the holder of any

2795 mortgage or trust deed outstanding on the property.

2796 (c) The amount deferred shall be recorded as a lien on the property and shall bear

2797 interest at a rate equal to the lesser of:

2798 (i) 6%; or

2799 (ii) the ~~[targeted]~~ federal funds rate:

2800 (A) as defined in ~~[12 C.F.R. Sec. 201.2]~~ 31 C.F.R. Sec. 203.2; and

2801 (B) that exists on the January 1 immediately preceding the day on which the taxes are

2802 deferred.

2803 (d) The amount deferred together with accrued interest shall be due and payable when
2804 the property is sold or otherwise conveyed.

2805 (4) Within ten days after the consummation of any adjustment or deferral, the county
2806 legislative body or the commission, as the case may be, shall cause the adjustment or deferral
2807 to be posted in the county where the property involved is located. The publication shall
2808 contain:

2809 (a) the name of the applicant;

2810 (b) the parcel, serial, or account number of the property;

2811 (c) the value of the property for the current year;

2812 (d) the sum of the delinquent taxes, interest, and penalty due; and

2813 (e) the adjusted amount paid or deferred.

2814 (5) A record of the action taken by the county legislative body shall be sent to the

2815 commission at the end of each month for all action taken during the preceding month. A

2816 record of the action taken by the commission shall be sent to the county legislative body of the

2817 counties affected by the action.

2818 Section 61. Section **59-7-605** is amended to read:

2819 **59-7-605. Definitions -- Tax credit -- Cleaner burning fuels.**

2820 (1) As used in this section:

2821 (a) "Board" means the Air Quality Board created under Title 19, Chapter 2, Air
2822 Conservation Act.

2823 (b) "Certified by the board" means that:

2824 (i) a motor vehicle on which conversion equipment has been installed meets the
2825 following criteria:

2826 (A) before the installation of conversion equipment, the vehicle does not exceed the
2827 emission cut points for a transient test driving cycle, as specified in 40 C.F.R. Part 51,
2828 Appendix E to Subpart S, or an equivalent test for the make, model, and year of the vehicle;

2829 (B) the motor vehicle's emissions of regulated pollutants, when operating on a fuel
2830 listed in Subsection (2)(a)(ii)(A) or (2)(a)(ii)(B), is less than the emissions were before the
2831 installation of conversion equipment; and

2832 (C) a reduction in emissions under Subsection (1)(b)(i)(B) is demonstrated by:

2833 (I) certification of the conversion equipment by the federal Environmental Protection
2834 Agency or by a state whose certification standards are recognized by the board;

2835 (II) testing the motor vehicle, before and after installation of the conversion equipment,
2836 in accordance with 40 C.F.R. Part 86, Control of Emissions from New and In-use Highway
2837 Vehicles and Engines, using all fuel the motor vehicle is capable of using; or

2838 (III) any other test or standard recognized by board rule; or

2839 (ii) special mobile equipment on which conversion equipment has been installed meets
2840 the following criteria:

2841 (A) the special mobile equipment's emissions of regulated pollutants, when operating
2842 on fuels listed in Subsection (2)(a)(iii)(A) or (2)(a)(iii)(B), is less than the emissions were
2843 before the installation of conversion equipment; and

2844 (B) a reduction in emissions under Subsection (1)(b)(ii)(A) is demonstrated by:

2845 (I) certification of the conversion equipment by the federal Environmental Protection
2846 Agency or by a state whose certification standards are recognized by the board; or

2847 (II) any other test or standard recognized by board rule.

2848 (c) "Clean fuel grant" means a grant awarded under Title 19, Chapter 1, Part 4, Clean

2849 Fuels [~~Conversion~~] and Vehicle Technology Program Act, for reimbursement of a portion of
2850 the incremental cost of an OEM vehicle or the cost of conversion equipment.

2851 (d) "Conversion equipment" means equipment referred to in Subsection (2)(a)(ii) or
2852 (2)(a)(iii).

2853 (e) "Electric-hybrid vehicle" is as defined in 42 U.S.C. Sec. 13435.

2854 (f) "Incremental cost" has the same meaning as in Section 19-1-402.

2855 (g) "OEM vehicle" has the same meaning as in Section 19-1-402.

2856 (h) "Special mobile equipment":

2857 (i) means any mobile equipment or vehicle that is not designed or used primarily for
2858 the transportation of persons or property; and

2859 (ii) includes construction or maintenance equipment.

2860 (2) (a) Except as provided in Subsection (2)(b), for taxable years beginning on or after
2861 January 1, 2001, but beginning on or before December 31, 2010, a taxpayer may claim a tax
2862 credit against tax otherwise due under this chapter or Chapter 8, Gross Receipts Tax on Certain
2863 Corporations Not Required to Pay Corporate Franchise or Income Tax Act, in an amount equal
2864 to:

2865 (i) 50% of the incremental cost of an OEM vehicle registered in Utah minus the
2866 amount of any clean fuel grant received, up to a maximum tax credit of \$3,000 per vehicle, if
2867 the vehicle:

2868 (A) is fueled by propane, natural gas, or electricity;

2869 (B) is fueled by other fuel the board determines annually on or before July 1 to be at
2870 least as effective in reducing air pollution as fuels under Subsection (2)(a)(i)(A); or

2871 (C) meets the clean-fuel vehicle standards in the federal Clean Air Act Amendments of
2872 1990, 42 U.S.C. Sec. 7521 et seq.;

2873 (ii) 50% of the cost of equipment for conversion, if certified by the board, of a motor
2874 vehicle registered in Utah minus the amount of any clean fuel grant received, up to a maximum
2875 tax credit of \$2,500 per motor vehicle, if the motor vehicle is to:

2876 (A) be fueled by propane, natural gas, or electricity;

2877 (B) be fueled by other fuel the board determines annually on or before July 1 to be at
2878 least as effective in reducing air pollution as fuels under Subsection (2)(a)(ii)(A); or

2879 (C) meet the federal clean-fuel vehicle standards in the federal Clean Air Act

2880 Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.; and
2881 (iii) 50% of the cost of equipment for conversion, if certified by the board, of a special
2882 mobile equipment engine minus the amount of any clean fuel grant received, up to a maximum
2883 tax credit of \$1,000 per special mobile equipment engine, if the special mobile equipment is to
2884 be fueled by:
2885 (A) propane, natural gas, or electricity; or
2886 (B) other fuel the board determines annually on or before July 1 to be:
2887 (I) at least as effective in reducing air pollution as the fuels under Subsection
2888 (2)(a)(iii)(A); or
2889 (II) substantially more effective in reducing air pollution than the fuel for which the
2890 engine was originally designed.
2891 (b) Notwithstanding Subsection (2)(a), for taxable years beginning on or after January
2892 1, 2006, a taxpayer may not claim a tax credit under this section with respect to an
2893 electric-hybrid vehicle.
2894 (3) A taxpayer shall provide proof of the purchase of an item for which a tax credit is
2895 allowed under this section by:
2896 (a) providing proof to the board in the form the board requires by rule;
2897 (b) receiving a written statement from the board acknowledging receipt of the proof;
2898 and
2899 (c) retaining the written statement described in Subsection (3)(b).
2900 (4) Except as provided by Subsection (5), the tax credit under this section is allowed
2901 only:
2902 (a) against any Utah tax owed in the taxable year by the taxpayer;
2903 (b) in the taxable year in which the item is purchased for which the tax credit is
2904 claimed; and
2905 (c) once per vehicle.
2906 (5) If the amount of a tax credit claimed by a taxpayer under this section exceeds the
2907 taxpayer's tax liability under this chapter for a taxable year, the amount of the tax credit
2908 exceeding the tax liability may be carried forward for a period that does not exceed the next
2909 five taxable years.
2910 Section 62. Section **59-10-1009** is amended to read:

2911 **59-10-1009. Definitions -- Cleaner burning fuels tax credit.**

2912 (1) As used in this section:

2913 (a) "Board" means the Air Quality Board created in Title 19, Chapter 2, Air
2914 Conservation Act.

2915 (b) "Certified by the board" means that:

2916 (i) a motor vehicle on which conversion equipment has been installed meets the
2917 following criteria:2918 (A) before the installation of conversion equipment, the vehicle does not exceed the
2919 emission cut points for a transient test driving cycle, as specified in 40 C.F.R. Part 51,
2920 Appendix E to Subpart S, or an equivalent test for the make, model, and year of the vehicle;2921 (B) the motor vehicle's emissions of regulated pollutants, when operating on fuels
2922 listed in Subsection (2)(a)(ii)(A) or (2)(a)(ii)(B), is less than the emissions were before the
2923 installation of conversion equipment; and

2924 (C) a reduction in emissions under Subsection (1)(b)(i)(B) is demonstrated by:

2925 (I) certification of the conversion equipment by the federal Environmental Protection
2926 Agency or by a state whose certification standards are recognized by the board;2927 (II) testing the motor vehicle, before and after installation of the conversion equipment,
2928 in accordance with 40 C.F.R. Part 86, Control Emissions from New and In-use Highway
2929 Vehicles and Engines, using all fuels the motor vehicle is capable of using; or

2930 (III) any other test or standard recognized by board rule; or

2931 (ii) special mobile equipment on which conversion equipment has been installed meets
2932 the following criteria:2933 (A) the special mobile equipment's emissions of regulated pollutants, when operating
2934 on fuels listed in Subsection (2)(a)(iii)(A) or (2)(a)(iii)(B), is less than the emissions were
2935 before the installation of conversion equipment; and

2936 (B) a reduction in emissions under Subsection (1)(b)(ii)(A) is demonstrated by:

2937 (I) certification of the conversion equipment by the federal Environmental Protection
2938 Agency or by a state whose certification standards are recognized by the board; or

2939 (II) any other test or standard recognized by the board.

2940 (c) "Clean fuel grant" means a grant a claimant, estate, or trust receives under Title 19,
2941 Chapter 1, Part 4, Clean Fuels ~~[Conversion]~~ and Vehicle Technology Program Act, for

2942 reimbursement of a portion of the incremental cost of the OEM vehicle or the cost of
2943 conversion equipment.

2944 (d) "Conversion equipment" means equipment referred to in Subsection (2)(a)(ii) or
2945 (2)(a)(iii).

2946 (e) "Electric-hybrid vehicle" is as defined in 42 U.S.C. Sec. 13435.

2947 (f) "Incremental cost" has the same meaning as in Section 19-1-402.

2948 (g) "OEM vehicle" has the same meaning as in Section 19-1-402.

2949 (h) "Special mobile equipment":

2950 (i) means any mobile equipment or vehicle not designed or used primarily for the
2951 transportation of persons or property; and

2952 (ii) includes construction or maintenance equipment.

2953 (2) (a) Except as provided in Subsection (2)(b), for taxable years beginning on or after
2954 January 1, 2001, but beginning on or before December 31, 2010, a claimant, estate, or trust
2955 may claim a nonrefundable tax credit against tax otherwise due under this chapter in an amount
2956 equal to:

2957 (i) 50% of the incremental cost of an OEM vehicle registered in Utah minus the
2958 amount of any clean fuel grant received, up to a maximum tax credit of \$3,000 per vehicle, if
2959 the vehicle:

2960 (A) is fueled by propane, natural gas, or electricity;

2961 (B) is fueled by other fuel the board determines annually on or before July 1 to be at
2962 least as effective in reducing air pollution as fuels under Subsection (2)(a)(i)(A); or

2963 (C) meets the clean-fuel vehicle standards in the federal Clean Air Act Amendments of
2964 1990, 42 U.S.C. Sec. 7521 et seq.;

2965 (ii) 50% of the cost of equipment for conversion, if certified by the board, of a motor
2966 vehicle registered in Utah minus the amount of any clean fuel conversion grant received, up to
2967 a maximum tax credit of \$2,500 per vehicle, if the motor vehicle:

2968 (A) is to be fueled by propane, natural gas, or electricity;

2969 (B) is to be fueled by other fuel the board determines annually on or before July 1 to be
2970 at least as effective in reducing air pollution as fuels under Subsection (2)(a)(ii)(A); or

2971 (C) will meet the federal clean fuel vehicle standards in the federal Clean Air Act
2972 Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.; and

2973 (iii) 50% of the cost of equipment for conversion, if certified by the board, of a special
2974 mobile equipment engine minus the amount of any clean fuel conversion grant received, up to a
2975 maximum tax credit of \$1,000 per special mobile equipment engine, if the special mobile
2976 equipment is to be fueled by:

2977 (A) propane, natural gas, or electricity; or

2978 (B) other fuel the board determines annually on or before July 1 to be:

2979 (I) at least as effective in reducing air pollution as the fuels under Subsection

2980 (2)(a)(iii)(A); or

2981 (II) substantially more effective in reducing air pollution than the fuel for which the
2982 engine was originally designed.

2983 (b) Notwithstanding Subsection (2)(a), for taxable years beginning on or after January
2984 1, 2006, a claimant, estate, or trust may not claim a tax credit under this section with respect to
2985 an electric-hybrid vehicle.

2986 (3) A claimant, estate, or trust shall provide proof of the purchase of an item for which
2987 a tax credit is allowed under this section by:

2988 (a) providing proof to the board in the form the board requires by rule;

2989 (b) receiving a written statement from the board acknowledging receipt of the proof;

2990 and

2991 (c) retaining the written statement described in Subsection (3)(b).

2992 (4) Except as provided by Subsection (5), the tax credit under this section is allowed

2993 only:

2994 (a) against any Utah tax owed in the taxable year by the claimant, estate, or trust;

2995 (b) in the taxable year in which the item is purchased for which the tax credit is

2996 claimed; and

2997 (c) once per vehicle.

2998 (5) If the amount of a tax credit claimed by a claimant, estate, or trust under this
2999 section exceeds the claimant's, estate's, or trust's tax liability under this chapter for a taxable
3000 year, the amount of the tax credit exceeding the tax liability may be carried forward for a period
3001 that does not exceed the next five taxable years.

3002 Section 63. Section **59-11-102** is amended to read:

3003 **59-11-102. Definitions.**

3004 As used in this chapter:

3005 (1) "Decedent" means a deceased natural person.

3006 (2) "Federal credit" means the maximum amount of the credit for estate death taxes
3007 allowed by Section 2011 in respect to a decedent's taxable estate.

3008 (3) "Gross estate" means "gross estate" as defined in Section 2031, [~~of the United~~
3009 ~~States~~] Internal Revenue Code [~~of 1954, as amended or renumbered~~].

3010 (4) "Nonresident" means a decedent who was domiciled outside of this state at the time
3011 of death.

3012 (5) "Other state" means any state in the United States other than this state, the District
3013 of Columbia, or any possession or territory of the United States.

3014 (6) "Person" includes any natural person, corporation, association, partnership, joint
3015 venture, syndicate, estate, trust, or other entity under which business or other activities may be
3016 conducted.

3017 (7) "Personal representative" means the executor, administrator, or trustee of a
3018 decedent's estate, or, if there is no executor, administrator, or trustee appointed, qualified, and
3019 acting within this state, then any person in actual or constructive possession of any property of
3020 the decedent.

3021 (8) "Resident" means a decedent who was domiciled in this state at the time of death.

3022 (9) "Section 2011" means Section 2011, [~~of the United States~~] Internal Revenue Code
3023 [~~of 1954, as amended or renumbered~~].

3024 (10) "Taxable estate" means "taxable estate" as defined in Section 2051, [~~of the United~~
3025 ~~States~~] Internal Revenue Code [~~of 1954, as amended or renumbered~~].

3026 (11) "Transfer" means "transfer" as [~~defined~~] described in Section 2001, [~~of the United~~
3027 ~~States~~] Internal Revenue Code [~~of 1954, as amended or renumbered~~].

3028 Section 64. Section **59-13-204** is amended to read:

3029 **59-13-204. Distributors liable for tax -- Computations -- Exceptions --**

3030 **Assumption of liability statements -- Motor fuel received -- Tax to be added to price of**
3031 **motor fuel.**

3032 (1) Distributors licensed under this part who receive motor fuel are liable for the tax as
3033 provided by this part, and shall report the receipt of the motor fuel to the commission and pay
3034 the tax as prescribed.

3035 (2) (a) Distributors shall compute the tax on the total taxable amount of motor fuel
3036 produced, purchased, received, imported, or refined in this state, and all distributors shipping
3037 motor fuels into this state shall compute the tax on the total taxable amount of motor fuels
3038 received for sale or use in this state.

3039 (b) All motor fuel distributed by any distributor to the distributor's branches within this
3040 state is considered to be sold at the time of this distribution and is subject to this part as if
3041 actually sold.

3042 (c) Distributors licensed under this part may sell motor fuel to other licensed
3043 distributors without the payment or collection of the tax, if the purchasing distributor furnishes
3044 the seller with an assumption of liability statement indicating the purchasing distributor is a
3045 licensed and bonded Utah motor fuel distributor and will assume the Utah motor fuel tax
3046 responsibility on all motor fuel purchased from the seller. The seller shall report each sale to
3047 the commission in a monthly report of sales as provided under Section 59-13-206.

3048 (3) If motor fuels have been purchased outside of this state and brought into this state
3049 in original packages from a distributor for the use of the consumer, then the tax shall be
3050 imposed when the motor fuel is received.

3051 (4) (a) Every distributor and retail dealer of motor fuels shall add the amount of the
3052 taxes levied and assessed by this part to the price of the motor fuels.

3053 (b) This Subsection (4) in no way affects the method of the collection of the taxes as
3054 specified in this part.

3055 (c) Notwithstanding Subsection (4)(a), if the Ute tribe may receive a refund under
3056 Section 59-13-201.5, the Ute tribe is not required to add the amount of the taxes levied and
3057 assessed by this part to the price of motor fuel that is purchased:

3058 (i) by a Ute tribal member; and

3059 (ii) at a retail station:

3060 (A) wholly owned by the Ute tribe; and

3061 (B) located on Ute trust land.

3062 (d) For purposes of Subsection (4)(a), the amount of taxes levied and assessed by this
3063 part do not include the amount of the reduction of tax under Subsection [~~59-3-201~~]
3064 59-13-201(9).

3065 Section 65. Section **59-14-208** is amended to read:

3066 **59-14-208. Rules for stamping and packaging procedures -- Penalty.**

3067 (1) The commission may by rule provide for the method of breaking packages, the
3068 forms and kinds of containers, and the method of affixing or cancelling stamps. These rules
3069 shall allow for the enforcement of payment by inspection.

3070 (2) ~~[Any]~~ A person is guilty of a class B misdemeanor who:

3071 (a) engages in or permits any practice which is prohibited by law or by rules of the
3072 commission and makes it difficult to enforce the provisions of this chapter by inspection;

3073 (b) refuses to allow full inspection of his premises by any peace officer or of any agent
3074 of the commission upon demand; or

3075 (c) hinders or in any way delays or prevents inspection when the demand is made[;].

3076 ~~[is guilty of a class B misdemeanor.]~~

3077 Section 66. Section **59-22-304** is amended to read:

3078 **59-22-304. Released claims.**

3079 (1) "Released Claims," which is referenced in Subsection 59-22-202(7), is defined in
3080 the Master Settlement Agreement as follows:

3081 "Released Claims" means:

3082 (1) for past conduct, acts or omissions, including any damages incurred in the future
3083 arising from such past conduct, acts or omissions, those Claims directly or indirectly based on,
3084 arising out of or in any way related, in whole or in part, to (A) the use, sale, distribution,
3085 manufacture, development, advertising, marketing or health effects of, (B) the exposure to, or
3086 (C) research, statements, or warnings regarding, Tobacco Products, including, but not limited
3087 to, the Claims asserted in the actions identified in Exhibit D, or any comparable Claims that
3088 were, could be or could have been asserted now or in the future in those actions or in any
3089 comparable action in federal, state or local court brought by a Settling State or a Releasing
3090 Party, whether or not such Settling State or Releasing Party has brought such action, except for
3091 claims not asserted in the actions identified in Exhibit D for outstanding liability under existing
3092 licensing, or similar, fee laws or existing tax laws, but not excepting claims for any tax liability
3093 of the Tobacco-Related Organizations or of any Released Party with respect to such
3094 Tobacco-Related Organizations, which claims are covered by the release and covenants set
3095 forth in this Agreement;

3096 (2) for future conduct, acts or omissions, only those monetary Claims directly or

3097 indirectly based on, arising out of or in any way related to, in whole or in part, the use of or
3098 exposure to Tobacco Products manufactured in the ordinary course of business, including
3099 without limitation any future Claims for reimbursement of health care costs allegedly
3100 associated with the use of or exposure to Tobacco Products."

3101 (2) Exhibit D is a list of the titles and docket numbers of the lawsuits brought by states
3102 against tobacco manufacturers and the courts in which those lawsuits were filed as of the date
3103 that the Master Settlement Agreement was entered into.

3104 Section 67. Section **59-22-307** is amended to read:

3105 **59-22-307. Participating manufacturer.**

3106 (1) "Participating Manufacturer," which is referenced in Subsection 59-22-203(1), is
3107 defined in the Master Settlement Agreement as follows:

3108 _"Participating Manufacturer" means a Tobacco Product Manufacturer that is or
3109 becomes a signatory to this Agreement, provided that (1) in the case of a Tobacco Product
3110 Manufacturer that is not an Original Participating Manufacturer, such Tobacco Product
3111 Manufacturer is bound by this Agreement and the Consent Decree, or, in any Settling State that
3112 does not permit amendment of the Consent Decree, a Consent Decree containing terms
3113 identical to those set forth in the Consent Decree, in all Settling States in which this Agreement
3114 and the Consent Decree binds Original Participating Manufacturers, provided, however, that
3115 such Tobacco Product Manufacturer need only become bound by the Consent Decree in those
3116 Settling State in which the Settling State has filed a Released Claim against it, and (2) in the
3117 case of a Tobacco Product Manufacturer that signs this Agreement after the MSA Execution
3118 Date, such Tobacco Product Manufacturer, within a reasonable period of time after signing this
3119 Agreement, makes any payments, including interest thereon at the Prime Rate, that it would
3120 have been obligated to make in the intervening period had it been a signatory as of the MSA
3121 Execution Date. "Participating Manufacturer" shall also include the successor of a
3122 Participating Manufacturer. Except as expressly provided in this Agreement, once an entity
3123 becomes a Participating Manufacturer such entity shall permanently retain the status of
3124 Participating Manufacturer. Each Participating Manufacturer shall regularly report its
3125 shipments of Cigarettes in or to the 50 United States, the District of Columbia and Puerto Rico
3126 to Management Science Associates, Inc., or a successor entity as set forth in subsection (mm).
3127 Solely for purposes of calculations pursuant to subsection IX(d), a Tobacco Product

3128 Manufacturer that is not a signatory to this Agreement shall be deemed to be a "Participating
3129 Manufacturer" if the Original Participating Manufacturers unanimously consent in writing."

3130 (2) Subsection IX(d) relates to Nonparticipating Manufacturer Adjustments.

3131 Section 68. Section **61-2b-25** is amended to read:

3132 **61-2b-25. Other law unaffected.**

3133 Nothing contained in this chapter shall be considered to prohibit any person registered,
3134 licensed, or certified under this chapter from engaging in the practice of real estate appraising
3135 as a professional corporation or a limited liability company in accordance with the provisions
3136 of Title 16, Chapter 11, Professional Corporation Act or Title 48, Chapter [~~2b~~] 2c, Utah
3137 Revised Limited Liability Company Act.

3138 Section 69. Section **62A-4a-107** is amended to read:

3139 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
3140 **curriculum.**

3141 (1) There is created within the division a full-time position of Child Welfare Training
3142 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee
3143 in that position is not responsible for direct casework services or the supervision of those
3144 services, but is required to:

3145 (a) develop child welfare curriculum that:

3146 (i) is current and effective, consistent with the division's mission and purpose for child
3147 welfare; and

3148 (ii) utilizes curriculum and resources from a variety of sources including those from:

3149 (A) the public sector;

3150 (B) the private sector; and

3151 (C) inside and outside of the state;

3152 (b) recruit, select, and supervise child welfare trainers;

3153 (c) develop a statewide training program, including a budget and identification of
3154 sources of funding to support that training;

3155 (d) evaluate the efficacy of training in improving job performance;

3156 (e) assist child protective services and foster care workers in developing and fulfilling
3157 their individual training plans;

3158 (f) monitor staff compliance with division training requirements and individual training

3159 plans; and

3160 (g) expand the collaboration between the division and schools of social work within
3161 institutions of higher education in developing child welfare services curriculum, and in
3162 providing and evaluating training.

3163 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
3164 establish a core curriculum for child welfare services that is substantially equivalent to the
3165 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

3166 (b) Any child welfare caseworker who is employed by the division for the first time
3167 after July 1, 1999, shall, before assuming significant independent casework responsibilities,
3168 successfully complete:

3169 (i) the core curriculum; and

3170 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of
3171 observing and accompanying at least two capable and experienced child welfare caseworkers
3172 as they perform work-related functions:

3173 (A) for three months if the caseworker has less than six months of on-the-job
3174 experience as a child welfare caseworker; or

3175 (B) for two months if the caseworker has six months or more but less than 24 months
3176 of on-the-job experience as a child welfare caseworker.

3177 (c) A child welfare caseworker with at least 24 months of on-the-job experience is not
3178 required to receive on-the-job training under Subsection (2)(b)(ii).

3179 (3) Child welfare caseworkers shall complete training in:

3180 (a) the legal duties of a child welfare caseworker;

3181 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights
3182 of children, parents, and families at all stages of a case, including:

3183 (i) initial contact;

3184 (ii) investigation; and

3185 (iii) treatment;

3186 (c) recognizing situations involving:

3187 (i) substance abuse;

3188 (ii) domestic violence;

3189 (iii) abuse; and

3190 (iv) neglect; and
3191 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of
3192 the United States to the child welfare caseworker's job, including:

- 3193 (i) search and seizure of evidence;
- 3194 (ii) the warrant requirement;
- 3195 (iii) exceptions to the warrant requirement; and
- 3196 (iv) removing a child from the custody of the child's parent or guardian.

3197 (4) The division shall train its child welfare caseworkers to apply the risk assessment
3198 tools and rules described in Subsection [~~62A-4a-116.1(4)(a)~~] 62A-4a-1002(2).

3199 (5) When a child welfare caseworker is hired, before assuming significant independent
3200 casework responsibilities, the child welfare caseworker shall complete the training described in
3201 Subsections (3) and (4).

3202 Section 70. Section **63-11-1** is amended to read:

3203 **63-11-1. Designation of old Utah state prison site as state park.**

3204 (1) The old Utah state prison site, as hereinafter particularly described, is set apart and
3205 designated as a state park, [~~said~~] this designation to be effective from and after the time said
3206 property is vacated for prison uses by transfer of the prisoners and prison facilities to the new
3207 state prison at the Point of the Mountain prison site in Salt Lake County, [~~state of~~] Utah.

3208 (2) The property so designated and set apart as a state park is particularly described as
3209 follows:

3210 Beginning at the northwest corner of Section 21, T. 1 S., R. 1 E., S. L. B. & M. thence
3211 N. 89 degrees 58 minutes 44 1/2 seconds E., along the north line of said section 2643.38 feet,
3212 to the north 1/4 corner of said section: thence S. 0 degrees 06 minutes 37 seconds W., 179.39
3213 feet to the south side of east 21st South Street: thence S. 89 degrees 52 minutes 41 seconds E.,
3214 along said south side of east 21st South Street, 409.91 feet to the northeast fence corner of the
3215 prison property: thence S. 0 degrees 17 minutes 36 seconds W., along the east fence line of said
3216 prison property, 1861.00 feet to the north bank of Parley's Canyon Creek Wash: thence N. 63
3217 degrees 40 minutes W., along a fence line on the north bank of said wash, 63.59 feet; thence S.
3218 10 degrees 08 minutes E., 87.97 feet along a fence and S. 12 degrees 39 minutes W., 29.00 feet
3219 along a fence, to a fence corner on the south bank of said wash: thence S. 18 degrees 09
3220 minutes W., along a fence line, 325.84 feet, to the center line of the D & RG RR tracks through

3221 the prison property: thence S. 18 degrees 36 minutes W., along a fence line 225.78 feet to the
 3222 southeast corner of said prison property: thence N. 89 degrees 47 minutes 58 seconds W., along
 3223 the north boundary line of the Highland Park Subdivision, said line being the east and west
 3224 center line through said section, 2830.90 feet, to the west 1/4 corner of said section: thence N.
 3225 0 degrees 14 minutes 46 seconds E., along the west line of said section 2639.78 feet, to the
 3226 point of beginning. [Said]

3227 (3) This tract of land contains approximately 188.66 acres; less state highway and areas
 3228 north of highway, 4.84 acres; yielding a net of 183.82 acres.

3229 Section 71. Section **63-30d-203** is amended to read:

3230 **63-30d-203. Exemptions for certain takings actions.**

3231 An action that involves takings law, as defined in Section [~~63-34-13~~] 63-90-2, is not
 3232 subject to the requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, and 63-30d-601.

3233 Section 72. Section **63-38f-501** is amended to read:

3234 **63-38f-501. Definitions.**

3235 As used in this part:

3236 (1) "Allocated cap amount" means the total amount of the targeted business income tax
 3237 credit that a business applicant is allowed to claim for a taxable year that represents a pro rata
 3238 share of the total amount of \$300,000 for each fiscal year allowed under Subsection
 3239 63-38f-503(2).

3240 (2) "Business applicant" means a business that:

3241 (a) is a:

3242 (i) claimant;

3243 (ii) estate; or

3244 (iii) trust; and

3245 (b) meets the criteria established in Section 63-38f-502.

3246 (3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or
 3247 nonresident person.

3248 (b) "Claimant" does not include an estate or trust.

3249 (4) "Community investment project" means a project that includes one or more of the
 3250 following criteria in addition to the normal operations of the business applicant:

3251 (a) substantial new employment;

- 3252 (b) new capital development; or
- 3253 (c) a combination of both Subsections (4)(a) and (b).
- 3254 (5) "Community investment project period" means the total number of years that the
- 3255 office determines a business applicant is eligible for a targeted business income tax credit for
- 3256 each community investment project.
- 3257 (6) "Enterprise zone" means an area within a county or municipality that has been
- 3258 designated as an enterprise zone by the office under Part 4, Enterprise Zone Act.
- 3259 (7) "Estate" means a nonresident estate or a resident estate.
- 3260 (8) "Local zone administrator" means a person:
- 3261 (a) designated by the governing authority of the county or municipal applicant as the
- 3262 local zone administrator in an enterprise zone application; and
- 3263 (b) approved by the office as the local zone administrator.
- 3264 (9) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or
- 3265 trust may claim:
- 3266 ~~(i)~~ (a) as provided by statute; and
- 3267 ~~(ii)~~ (b) regardless of whether, for the taxable year for which the claimant, estate, or
- 3268 trust claims the tax credit, the claimant, estate, or trust has a tax liability under:
- 3269 ~~(A)~~ (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
- 3270 ~~(B)~~ (ii) Title 59, Chapter 10, Individual Income Tax Act.
- 3271 (10) "Targeted business income tax credit" means a refundable tax credit available
- 3272 under Section 63-38f-503.
- 3273 (11) "Targeted business income tax credit eligibility form" means a document provided
- 3274 annually to the business applicant by the office that complies with the requirements of
- 3275 Subsection 63-38f-503(8).
- 3276 (12) "Trust" means a nonresident trust or a resident trust.
- 3277 Section 73. Section **63-46b-3** is amended to read:
- 3278 **63-46b-3. Commencement of adjudicative proceedings.**
- 3279 (1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings
- 3280 shall be commenced by either:
- 3281 (a) a notice of agency action, if proceedings are commenced by the agency; or
- 3282 (b) a request for agency action, if proceedings are commenced by persons other than

3283 the agency.

3284 (2) A notice of agency action shall be filed and served according to the following
3285 requirements:

3286 (a) The notice of agency action shall be in writing, signed by a presiding officer, and
3287 shall include:

3288 (i) the names and mailing addresses of all persons to whom notice is being given by the
3289 presiding officer, and the name, title, and mailing address of any attorney or employee who has
3290 been designated to appear for the agency;

3291 (ii) the agency's file number or other reference number;

3292 (iii) the name of the adjudicative proceeding;

3293 (iv) the date that the notice of agency action was mailed;

3294 (v) a statement of whether the adjudicative proceeding is to be conducted informally
3295 according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally
3296 according to the provisions of Sections 63-46b-6 [to] through 63-46b-11;

3297 (vi) if the adjudicative proceeding is to be formal, a statement that each respondent
3298 must file a written response within 30 days of the mailing date of the notice of agency action;

3299 (vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute
3300 or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose
3301 for which the hearing is to be held, and a statement that a party who fails to attend or
3302 participate in the hearing may be held in default;

3303 (viii) if the adjudicative proceeding is to be informal and a hearing is required by
3304 statute or rule, or if a hearing is permitted by rule and may be requested by a party within the
3305 time prescribed by rule, a statement that the parties may request a hearing within the time
3306 provided by the agency's rules;

3307 (ix) a statement of the legal authority and jurisdiction under which the adjudicative
3308 proceeding is to be maintained;

3309 (x) the name, title, mailing address, and telephone number of the presiding officer; and

3310 (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known
3311 by the presiding officer, the questions to be decided.

3312 (b) When adjudicative proceedings are commenced by the agency, the agency shall:

3313 (i) mail the notice of agency action to each party;

3314 (ii) publish the notice of agency action, if required by statute; and
3315 (iii) mail the notice of agency action to any other person who has a right to notice
3316 under statute or rule.

3317 (3) (a) Where the law applicable to the agency permits persons other than the agency to
3318 initiate adjudicative proceedings, that person's request for agency action shall be in writing and
3319 signed by the person invoking the jurisdiction of the agency, or by that person's representative,
3320 and shall include:

3321 (i) the names and addresses of all persons to whom a copy of the request for agency
3322 action is being sent;

3323 (ii) the agency's file number or other reference number, if known;

3324 (iii) the date that the request for agency action was mailed;

3325 (iv) a statement of the legal authority and jurisdiction under which agency action is
3326 requested;

3327 (v) a statement of the relief or action sought from the agency; and

3328 (vi) a statement of the facts and reasons forming the basis for relief or agency action.

3329 (b) The person requesting agency action shall file the request with the agency and shall
3330 mail a copy to each person known to have a direct interest in the requested agency action.

3331 (c) An agency may, by rule, prescribe one or more forms eliciting the information
3332 required by Subsection (3)(a) to serve as the request for agency action when completed and
3333 filed by the person requesting agency action.

3334 (d) The presiding officer shall promptly review a request for agency action and shall:

3335 (i) notify the requesting party in writing that the request is granted and that the
3336 adjudicative proceeding is completed;

3337 (ii) notify the requesting party in writing that the request is denied and, if the
3338 proceeding is a formal adjudicative proceeding, that the party may request a hearing before the
3339 agency to challenge the denial; or

3340 (iii) notify the requesting party that further proceedings are required to determine the
3341 agency's response to the request.

3342 (e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information
3343 required by Subsection 63-46b-5(1)(i) in addition to disclosure required by Subsection
3344 (3)(d)(ii).

3345 (ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except
3346 that any notice required by Subsection (3)(d)(iii) may be published when publication is
3347 required by statute.

3348 (iii) The notice required by Subsection (3)(d)(iii) shall:

3349 (A) give the agency's file number or other reference number;

3350 (B) give the name of the proceeding;

3351 (C) designate whether the proceeding is one of a category to be conducted informally
3352 according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with
3353 citation to the applicable rule authorizing that designation, or formally according to Sections
3354 63-46b-6 [tø] through 63-46b-11;

3355 (D) in the case of a formal adjudicative proceeding, and where respondent parties are
3356 known, state that a written response must be filed within 30 days of the date of the agency's
3357 notice if mailed, or within 30 days of the last publication date of the agency's notice, if
3358 published;

3359 (E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an
3360 informal adjudicative proceeding, state the time and place of any scheduled hearing, the
3361 purpose for which the hearing is to be held, and that a party who fails to attend or participate in
3362 a scheduled and noticed hearing may be held in default;

3363 (F) if the adjudicative proceeding is to be informal, and a hearing is required by statute
3364 or rule, or if a hearing is permitted by rule and may be requested by a party within the time
3365 prescribed by rule, state the parties' right to request a hearing and the time within which a
3366 hearing may be requested under the agency's rules; and

3367 (G) give the name, title, mailing address, and telephone number of the presiding
3368 officer.

3369 (4) When initial agency determinations or actions are not governed by this chapter, but
3370 agency and judicial review of those initial determinations or actions are subject to the
3371 provisions of this chapter, the request for agency action seeking review must be filed with the
3372 agency within the time prescribed by the agency's rules.

3373 (5) For designated classes of adjudicative proceedings, an agency may, by rule, provide
3374 for a longer response time than allowed by this section, and may provide for a shorter response
3375 time if required or permitted by applicable federal law.

3376 (6) Unless the agency provides otherwise by rule or order, an application for a package
3377 agency, license, permit, or certificate of approval filed under authority of Title 32A, Alcoholic
3378 Beverage Control Act, is not considered to be a request for agency action under this chapter.

3379 (7) If the purpose of the adjudicative proceeding is to award a license or other privilege
3380 as to which there are multiple competing applicants, the agency may, by rule or order, conduct
3381 a single adjudicative proceeding to determine the award of that license or privilege.

3382 Section 74. Section **63-46b-8** is amended to read:

3383 **63-46b-8. Procedures for formal adjudicative proceedings -- Hearing procedure.**

3384 (1) Except as provided in Subsections 63-46b-3(3)(d)(i) and (ii), in all formal
3385 adjudicative proceedings, a hearing shall be conducted as follows:

3386 (a) The presiding officer shall regulate the course of the hearing to obtain full
3387 disclosure of relevant facts and to afford all the parties reasonable opportunity to present their
3388 positions.

3389 (b) On his own motion or upon objection by a party, the presiding officer:

3390 (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

3391 (ii) shall exclude evidence privileged in the courts of Utah;

3392 (iii) may receive documentary evidence in the form of a copy or excerpt if the copy or
3393 excerpt contains all pertinent portions of the original document; and

3394 (iv) may take official notice of any facts that could be judicially noticed under the Utah
3395 Rules of Evidence, of the record of other proceedings before the agency, and of technical or
3396 scientific facts within the agency's specialized knowledge.

3397 (c) The presiding officer may not exclude evidence solely because it is hearsay.

3398 (d) The presiding officer shall afford to all parties the opportunity to present evidence,
3399 argue, respond, conduct cross-examination, and submit rebuttal evidence.

3400 (e) The presiding officer may give persons not a party to the adjudicative proceeding
3401 the opportunity to present oral or written statements at the hearing.

3402 (f) All testimony presented at the hearing, if offered as evidence to be considered in
3403 reaching a decision on the merits, shall be given under oath.

3404 (g) The hearing shall be recorded at the agency's expense.

3405 (h) Any party, at his own expense, may have a person approved by the agency prepare a
3406 transcript of the hearing, subject to any restrictions that the agency is permitted by statute to

3407 impose to protect confidential information disclosed at the hearing.

3408 (i) All hearings shall be open to all parties.

3409 (2) This section does not preclude the presiding officer from taking appropriate
3410 measures necessary to preserve the integrity of the hearing.

3411 Section 75. Section **63-55-259** is amended to read:

3412 **63-55-259. Repeal dates, Title 59.**

3413 [~~(1) Title 59, Chapter 1, Part 12, Legislative Intent, is repealed July 1, 2006.~~]

3414 [~~(2)~~] (1) Section 59-9-102.5 is repealed December 31, 2010.

3415 [~~(3)~~] (2) Section 59-10-530.5, Homeless Trust Account, is repealed July 1, 2007.

3416 Section 76. Section **63-55-263** is amended to read:

3417 **63-55-263. Repeal dates, Titles 63 to 63E.**

3418 (1) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2012.

3419 (2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed
3420 July 1, 2007.

3421 (3) The Resource Development Coordinating Committee, created in Section
3422 63-38d-501, is repealed July 1, 2015.

3423 (4) Title 63, Chapter 38f, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

3424 (5) (a) Title 63, Chapter 38f, Part 11, Recycling Market Development Zone Act, is
3425 repealed July 1, 2010.

3426 (b) Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in
3427 recycling market development zones, are repealed for taxable years beginning on or after
3428 January 1, 2011.

3429 (c) Notwithstanding Subsection (5)(b), a person may not claim a tax credit under
3430 Section 59-7-610 or 59-10-1007:

3431 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
3432 59-10-1007, if the machinery or equipment is purchased on or after July 1, 2010; or

3433 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
3434 the expenditure is made on or after July 1, 2010.

3435 (d) Notwithstanding Subsections (5)(b) and (c), a person may carry forward a tax credit
3436 in accordance with Section 59-7-610 or 59-10-1007 if:

3437 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

3438 (ii) (A) for the purchase price of machinery or equipment described in Section
3439 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before June 30, 2010;
3440 or

3441 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
3442 expenditure is made on or before June 30, 2010.

3443 (6) Title 63, Chapter 47, Utah Commission for Women and Families, is repealed July
3444 1, 2011.

3445 (7) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children
3446 and Youth At Risk Act, is repealed July 1, 2016.

3447 (8) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2008.

3448 (9) Title 63, Chapter 99, Utah Commission on Aging, is repealed July 1, 2007.

3449 (10) ~~(a)~~ Section 63A-4-204, authorizing the Risk Management Fund to provide
3450 coverage to any public school district that chooses to participate, is repealed July 1, 2016.

3451 ~~[(b) Section 63A-4-205, authorizing the Risk Management Fund to provide coverage to~~
3452 ~~any local health department that chooses to participate, is repealed July 1, 2006.]~~

3453 (11) Section 63C-8-106, Rural residency training program, is repealed July 1, 2015.

3454 Section 77. Section **63-55b-154** is amended to read:

3455 **63-55b-154. Repeal dates -- Title 54.**

3456 ~~[Section 54-7-12.6 is repealed November 30, 2004.]~~

3457 Section 78. Section **63-55b-159** is amended to read:

3458 **63-55b-159. Repeal dates -- Title 59.**

3459 ~~[Section 59-9-101.3 is repealed January 1, 2005, and the Labor Commission may not~~
3460 ~~impose an assessment under Section 59-9-101.3 after December 31, 2004.]~~

3461 Section 79. Section **63-55b-163** is amended to read:

3462 **63-55b-163. Repeal dates, Title 63 to Title 63B.**

3463 (1) Section 63-38a-105 is repealed July 1, 2007.

3464 (2) Sections 63-63b-101 and 63-63b-102 are repealed on July 1, 2007.

3465 ~~[(3) Section 63A-1-110 is repealed July 1, 2006.]~~

3466 ~~[(4) Title 63A, Chapter 6, Part 1, Division of Information Technology Services, is~~
3467 ~~repealed on July 1, 2006.]~~

3468 ~~[(5)]~~ (3) Section 63B-14-101 is repealed December 31, 2008.

3469 Section 80. Section **63-55b-178** is amended to read:

3470 **63-55b-178. Repeal dates, Title 78.**

3471 [(+) Section 78-9-101, Practicing law without a license, is repealed May 3, 2007.

3472 [~~(2) Title 78, Chapter 60, Limitation of Judgments Against Governmental Entities Act,~~
3473 ~~is repealed December 31, 2004.~~]

3474 Section 81. Section **63-56-806** is amended to read:

3475 **63-56-806. Decisions of chief procurement officer to be in writing -- Effect of no**
3476 **writing.**

3477 (1) The chief procurement officer, the head of a purchasing agency, or the designee of
3478 either officer shall promptly issue a written decision regarding any protest, debarment or
3479 suspension, or contract controversy if it is not settled by a mutual agreement. The decision
3480 shall state the reasons for the action taken and inform the protestor, contractor, or prospective
3481 contractor of the right to judicial or administrative review as provided in this chapter.

3482 (2) A decision shall be effective until stayed or reversed on appeal, except to the extent
3483 provided in Section 63-56-802. A copy of the decision under Subsection (1) shall be mailed or
3484 otherwise furnished immediately to the protestor, prospective contractor, or contractor. The
3485 decision shall be final and conclusive unless the protestor, prospective contractor, or contractor
3486 appeals administratively to the procurement appeals board in accordance with Subsection
3487 [~~63-45-810~~] 63-56-810(2) or the protestor, prospective contractor, or contractor commences an
3488 action in district court in accordance with Section 63-56-815.

3489 (3) If the chief procurement officer, the head of a purchasing agency, or the designee of
3490 either officer does not issue the written decision regarding a contract controversy within 60
3491 calendar days after written request for a final decision, or within such longer period as may be
3492 agreed upon by the parties, then the contractor may proceed as if an adverse decision had been
3493 received.

3494 Section 82. Section **63-65-2** is amended to read:

3495 **63-65-2. Definitions.**

3496 As used in this chapter:

3497 (1) "Agency bonds" means any bond, note, contract, or other evidence of indebtedness
3498 representing loans or grants made by an authorizing agency.

3499 (2) "Authorized official" means the state treasurer or other person authorized by a bond

3500 document to perform the required action.

3501 (3) "Authorizing agency" means the board, person, or unit with legal responsibility for
3502 administering and managing revolving loan funds.

3503 (4) "Bond document" means:

3504 (a) a resolution of the commission; or

3505 (b) an indenture or other similar document authorized by the commission that
3506 authorizes and secures outstanding revenue bonds from time to time.

3507 (5) "Commission" means the State Bonding Commission created in Section
3508 63B-1-201.

3509 (6) "Revenue bonds" means any special fund revenue bonds issued under this chapter.

3510 (7) "Revolving Loan Funds" means:

3511 (a) the Water Resources Conservation and Development Fund, created in Section
3512 73-10-24;

3513 (b) the Water Resources Construction Fund, created in Section 73-10-8;

3514 (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

3515 (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean
3516 Fuels [~~Conversion~~] and Vehicle Technology Program Act;

3517 (e) the Water Development Security Fund and its subaccounts created in Section
3518 73-10c-5;

3519 (f) the Agriculture Resource Development Fund, created in Section 4-18-6;

3520 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

3521 (h) the Permanent Community Impact Fund, created in Section 9-4-303;

3522 (i) the Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3; and

3523 (j) the Transportation Infrastructure Loan Fund, created in Section 72-2-202.

3524 Section 83. Section **63-90-2** is amended to read:

3525 **63-90-2. Definitions.**

3526 As used in this chapter:

3527 (1) "Constitutional taking" or "taking" means a governmental action that results in a
3528 taking of private property so that compensation to the owner of the property is required by:

3529 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

3530 (b) Utah Constitution Article I, Section 22.

- 3531 (2) (a) "Governmental action" or "action" means:
- 3532 (i) proposed rules and emergency rules by a state agency that if adopted and enforced
- 3533 may limit the use of private property unless:
- 3534 (A) its provisions are in accordance with applicable state or federal statutes; and
- 3535 (B) the agency has adopted and implemented the guidelines required by Section
- 3536 63-90-3;
- 3537 (ii) proposed or implemented licensing or permitting conditions, requirements, or
- 3538 limitations to the use of private property unless:
- 3539 (A) its provisions are in accordance with applicable state or federal statutes, rules, or
- 3540 regulations; and
- 3541 (B) the agency has adopted and implemented the guidelines required by Section
- 3542 63-90-3;
- 3543 (iii) required dedications or exactions from owners of private property; or
- 3544 (iv) statutes and rules.
- 3545 (b) "Governmental action" or "action" does not mean:
- 3546 (i) activity in which the power of eminent domain is exercised formally;
- 3547 (ii) repealing rules discontinuing governmental programs or amending rules in a
- 3548 manner that lessens interference with the use of private property;
- 3549 (iii) law enforcement activity involving seizure or forfeiture of private property for
- 3550 violations of law or as evidence in criminal proceedings;
- 3551 (iv) school and institutional trust land management activities and disposal of land and
- 3552 interests in land conducted pursuant to Title 53C, Schools and Institutional Trust Lands
- 3553 Management Act;
- 3554 (v) orders and enforcement actions that are issued by a state agency in accordance with
- 3555 Title 63, Chapter 46b, [Utah] Administrative Procedures Act, and applicable federal or state
- 3556 statutes; or
- 3557 (vi) orders and enforcement actions that are issued by a court of law in accordance with
- 3558 applicable federal or state statutes.
- 3559 (3) "Private property" means any school or institutional trust lands and any real or
- 3560 personal property in this state that is protected by:
- 3561 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

3562 (b) Utah Constitution Article I, Section 22.

3563 (4) (a) "State agency" means an officer or administrative unit of the executive branch
3564 of state government that is authorized by law to adopt rules.

3565 (b) "State agency" does not include the legislative or judicial branches of state
3566 government.

3567 [~~6~~] (5) "Takings law" means the provisions of the federal and state constitutions, the
3568 case law interpreting those provisions, and any relevant statutory provisions that require a
3569 governmental unit to compensate a private property owner for a constitutional taking.

3570 Section 84. Section **63A-3-205** is amended to read:

3571 **63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.**

3572 (1) As used in this section, "revolving loan fund" means:

3573 (a) the Water Resources Conservation and Development Fund, created in Section
3574 73-10-24;

3575 (b) the Water Resources Construction Fund, created in Section 73-10-8;

3576 (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

3577 (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean
3578 Fuels [~~Conversion~~] and Vehicle Technology Program Act;

3579 (e) the Water Development Security Account and its subaccounts created in Section
3580 73-10c-5;

3581 (f) the Agriculture Resource Development Fund, created in Section 4-18-6;

3582 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

3583 (h) the Permanent Community Impact Fund, created in Section 9-4-303;

3584 (i) the Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3;

3585 (j) the Uintah Basin Revitalization Fund, created in Section 9-10-102; and

3586 (k) the Navajo Revitalization Fund, created in Section 9-11-104.

3587 (2) The division shall for each revolving loan fund:

3588 (a) make rules establishing standards and procedures governing:

3589 (i) payment schedules and due dates;

3590 (ii) interest rate effective dates;

3591 (iii) loan documentation requirements; and

3592 (iv) interest rate calculation requirements; and

- 3593 (b) make an annual report to the Legislature containing:
- 3594 (i) the total dollars loaned by that fund during the last fiscal year;
- 3595 (ii) a listing of each loan currently more than 90 days delinquent, in default, or that was
- 3596 restructured during the last fiscal year;
- 3597 (iii) a description of each project that received money from that revolving loan fund;
- 3598 (iv) the amount of each loan made to that project;
- 3599 (v) the specific purpose for which the proceeds of the loan were to be used, if any;
- 3600 (vi) any restrictions on the use of the loan proceeds;
- 3601 (vii) the present value of each loan at the end of the fiscal year calculated using the
- 3602 interest rate paid by the state on the bonds providing the revenue on which the loan is based or,
- 3603 if that is unknown, on the average interest rate paid by the state on general obligation bonds
- 3604 issued during the most recent fiscal year in which bonds were sold; and
- 3605 (viii) the financial position of each revolving loan fund, including the fund's cash
- 3606 investments, cash forecasts, and equity position.

3607 Section 85. Section **63F-1-205** is amended to read:

3608 **63F-1-205. Approval of acquisitions of information technology.**

3609 (1) (a) In accordance with Subsection (2), the chief information officer shall approve

3610 the acquisition by an executive branch agency of:

- 3611 (i) information technology equipment;
- 3612 (ii) telecommunications equipment;
- 3613 (iii) software;
- 3614 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 3615 (v) data acquisition.

3616 (b) The chief information officer may negotiate the purchase, lease, or rental of private

3617 or public information technology or telecommunication services or facilities in accordance with

3618 this section.

3619 (c) Where practical, efficient, and economically beneficial, the chief information

3620 officer shall use existing private and public information technology or telecommunication

3621 resources.

3622 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount

3623 that exceeds the value established by the chief information officer by rule in accordance with

3624 Section 63F-1-206, the chief information officer shall:

3625 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
3626 services and the ability of the proposed information technology or telecommunications services
3627 or supplies to meet those needs; and

3628 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
3629 provide in writing to the chief procurement officer in the Division of Purchasing and General
3630 Services that:

3631 (i) the analysis required in Subsection (2)(a) was completed; and

3632 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
3633 services, products, or supplies is practical, efficient, and economically beneficial to the state
3634 and the executive branch agency or subscriber of services.

3635 (3) In approving an acquisition described in Subsections (1) and (2), the chief
3636 information officer shall:

3637 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
3638 under which an agency must obtain approval from the chief information officer before
3639 acquiring the items listed in Subsections (1) and (2);

3640 (b) for those acquisitions requiring approval, determine whether the acquisition is in
3641 compliance with:

3642 (i) the executive branch strategic plan;

3643 (ii) the applicable agency information technology plan;

3644 (iii) the budget for the executive branch agency or department as adopted by the
3645 Legislature; and

3646 (iv) Title 63, Chapter 56, Utah Procurement Code; and

3647 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
3648 two or more executive branch agencies if it is in the best interests of the state.

3649 (4) (a) Each executive branch agency shall provide the chief information officer with
3650 complete access to all information technology records, documents, and reports:

3651 (i) at the request of the chief information officer; and

3652 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
3653 (1).

3654 (b) Beginning July 1, 2006 and in accordance with administrative rules established by

3655 the department under Section 63F-1-206, no new technology projects may be initiated by an
3656 executive branch agency or the department unless the technology project is described in a
3657 formal project plan and the business case analysis has been approved by the chief information
3658 officer and agency head. The project plan and business case analysis required by this
3659 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 3660 (i) a statement of work to be done and existing work to be modified or displaced;
3661 (ii) total cost of system development and conversion effort, including system analysis
3662 and programming costs, establishment of master files, testing, documentation, special
3663 equipment cost and all other costs, including overhead;
3664 (iii) savings or added operating costs that will result after conversion;
3665 (iv) other advantages or reasons that justify the work;
3666 (v) source of funding of the work, including ongoing costs;
3667 (vi) consistency with budget submissions and planning components of budgets; and
3668 (vii) whether the work is within the scope of projects or initiatives envisioned when the
3669 current fiscal year budget was approved.

3670 (5) (a) The chief information officer and the Division of Purchasing and General
3671 Services shall work cooperatively to establish procedures under which the chief information
3672 officer shall monitor and approve acquisitions as provided in this section.

3673 (b) The procedures established under this section shall include at least the written
3674 certification required by Subsection [~~63-56-9~~] 63-56-204(8).

3675 Section 86. Section **64-13-14** is amended to read:

3676 **64-13-14. Secure correctional facilities.**

3677 (1) The department shall maintain and operate secure correctional facilities for the
3678 incarceration of offenders.

3679 (2) For each compound of secure correctional facilities, as established by the executive
3680 director, wardens shall be appointed as the chief administrative officers by the executive
3681 director.

3682 [~~(2)~~] (3) The department may transfer offenders from one correctional facility to
3683 another and may, with the consent of the sheriff, transfer any offender to a county jail.

3684 Section 87. Section **67-11-2** is amended to read:

3685 **67-11-2. Definitions.**

3686 For the purposes of this chapter:

3687 [~~(A)~~] (1) "Employee" includes an elective or appointive officer or employee of a state
3688 or political subdivision thereof.

3689 [~~(C)~~] (2) "Employment" means any service performed by an employee in the employ of
3690 the state, or any political subdivision thereof, for such employer, except:

3691 [~~(1)~~] (a) service which in the absence of an agreement entered into under this chapter
3692 would constitute "employment" as defined in the Social Security Act;

3693 [~~(2)~~] (b) service which under the Social Security Act may not be included in an
3694 agreement between the state and federal security administrator entered into under this [~~act~~]
3695 chapter;

3696 [~~(3)~~] (c) services of an emergency nature, service in any class or classes of positions the
3697 compensation for which is on a fee basis[;];

3698 (i) performed [~~(A)~~] by employees of the state[;]; or [~~(B)~~]

3699 (ii) if so provided in the plan submitted under Section 67-11-5, by a political
3700 subdivision of the state, by an employee of such subdivision;

3701 [~~(4)~~] (d) services performed by students employed by a public school, college, or
3702 university at which they are enrolled and which they are attending on a full-time basis;

3703 [~~(5)~~] (e) part-time services performed by election workers, i.e., judges of election and
3704 registrars; or

3705 [~~(6)~~] (f) services performed by voluntary firemen, except when such services are
3706 prescheduled for a specific period of duty.

3707 [~~(7)~~] (3) "Federal Insurance Contributions Act" means Chapter 21 of the federal Internal
3708 Revenue Code as such Code may be amended.

3709 [~~(8)~~] (4) "Federal security administrator" includes any individual to whom the federal
3710 security administrator has delegated any of his functions under the Social Security Act with
3711 respect to coverage under such act of employees of states and their political subdivisions.

3712 [~~(9)~~] (5) "Political subdivision" includes an instrumentality of the state, of one or more
3713 of its political subdivisions, or of the state and one or more of its political subdivisions,
3714 including leagues or associations thereof, but only if such instrumentality is a juristic entity
3715 which is legally separate and distinct from the state or subdivision and only if its employees are
3716 not by virtue of their relation to such juristic entity employees of the state or subdivision. The

3717 term shall include special districts or authorities created by the Legislature or local
 3718 governments such as, but not limited to, mosquito abatement districts, sewer or water districts,
 3719 and libraries.

3720 ~~[(b)]~~ (6) "Sick pay" means payments made to employees on account of sickness or
 3721 accident disability under a sick leave plan of the type outlined in ~~[Subsections 209(b) and~~
 3722 ~~209(d)]~~ 42 U.S.C. Secs. 409(a)(2) and (3) of the Social Security Act.

3723 ~~[(h)]~~ (7) "Social Security Act" means the Act of Congress approved August 14, 1935,
 3724 Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations
 3725 and requirements issued pursuant thereto), as such act has been and may from time to time be
 3726 amended.

3727 ~~[(e)]~~ (8) "State agency" means the Division of Finance, referred to herein as the state
 3728 agency.

3729 ~~[(a)]~~ (9) "Wages" means all remuneration for employment as defined herein, including
 3730 the cash value of all remuneration paid in any medium other than cash, except that such term
 3731 shall not include "sick pay" as that term is defined in this section and shall not include that part
 3732 of such remuneration which, even if it were for "employment" within the meaning of the
 3733 Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that
 3734 act.

3735 Section 88. Section **67-11-3** is amended to read:

3736 **67-11-3. General powers of state agency and interstate instrumentalities.**

3737 ~~[(a)]~~ (1) The state agency, with the approval of the governor, is hereby authorized to
 3738 enter on behalf of the state into an agreement with the federal security administrator, consistent
 3739 with the terms and provisions of this chapter, for the purpose of extending the benefits of the
 3740 federal old-age and survivors insurance system to employees of the state or any political
 3741 subdivision thereof with respect to services specified in such agreement which constitute
 3742 "employment" as defined in Section 67-11-2. Such agreement may contain such provisions
 3743 relating to coverage, benefits, contributions, effective date, modification and termination of the
 3744 agreement, administration, and other appropriate provisions as the state agency and federal
 3745 security administrator shall agree upon~~[-but].~~ However, except as may be otherwise required
 3746 or permitted by or under the Social Security Act as to the services to be covered, such
 3747 agreement shall provide in effect that:

3748 ~~[(1)]~~ (a) Benefits will be provided for employees whose services are covered by the
3749 agreement (and their dependents and survivors) on the same basis as though such services
3750 constituted employment within the meaning of Title II of the Social Security Act.

3751 ~~[(2)]~~ (b) The state will pay to the secretary of the treasury of the United States, at such
3752 time or times as may be prescribed under the Social Security Act, contributions with respect to
3753 wages, ~~[(as defined in Section 67-11-2)]~~, equal to the sum of the taxes which would be
3754 imposed by Sections 1400 and 1410 of the Federal Insurance Contributions Act if the services
3755 covered by the agreement constituted employment within the meaning of that act.

3756 ~~[(3) Such]~~ (c) The agreement shall be effective with respect to services in employment
3757 covered by the agreement performed after a date specified therein but in no event may it be
3758 effective with respect to any such services performed prior to January 1, 1951, and in no case
3759 prior to an employment period with reference to which said insurance coverage can be obtained
3760 under the provisions of the Social Security Act.

3761 ~~[(4)]~~ (d) All services which constitute employment as defined in Section 67-11-2 and
3762 are performed in the employ of the state by employees of the state, shall be covered by the
3763 agreement.

3764 ~~[(5)]~~ (e) All services which ~~[(A)]~~ constitute employment as defined in Section 67-11-2,
3765 ~~[(B)]~~ are performed in the employ of a political subdivision of the state, and ~~[(C)]~~ are covered
3766 by a plan which is in conformity with the terms of the agreement and has been approved by the
3767 state agency under Section 67-11-5, shall be covered by the agreement.

3768 ~~[(b)]~~ (2) Any instrumentality jointly created by this state and any other state or states is
3769 hereby authorized, upon the granting of like authority by such other state or states~~[(1)]~~:

3770 (a) to enter into an agreement with the federal security administrator whereby the
3771 benefits of the federal old-age and survivors insurance system shall be extended to employees
3772 of such instrumentality~~[(2)]~~;

3773 (b) to require its employees to pay, ~~[(and for that purpose to deduct from their~~
3774 wages~~)]~~, contributions equal to the amounts which they would be required to pay under
3775 Subsection 67-11-4~~[(a)]~~(1) if they were covered by an agreement made pursuant to Subsection
3776 ~~[(a);]~~ (1); and ~~[(3)]~~

3777 (c) to make payments to the secretary of the treasury in accordance with such
3778 agreement, including payments from its own funds, and otherwise to comply with such

3779 agreements. [~~Such~~]

3780 (3) An agreement shall, to the extent practicable, be consistent with the terms and
3781 provisions of [~~Subsection (a)~~] Subsections (1) and (2) and other provisions of this chapter.

3782 Section 89. Section **67-11-4** is amended to read:

3783 **67-11-4. Payments into Contribution Fund by employees.**

3784 [~~(a)~~] (1) Every employee of the state whose services are covered by an agreement
3785 entered into under Section 67-11-3 shall be required to pay contributions for the period of such
3786 coverage, into the Contribution Fund established by Section 67-11-6[~~;~~~~contributions;~~] with
3787 respect to wages, [~~(f)~~as defined in Section 67-11-2], equal to the amount of tax which would
3788 be imposed by Section 1400 of the Federal Insurance Contributions Act if such services
3789 constituted employment within the meaning of that act. [~~Such~~] This liability shall arise in
3790 consideration of the employee's retention in the service of the state, or his entry upon such
3791 service, after [~~the enactment of this act~~] February 14, 1951.

3792 [~~(b)~~] (2) The contribution imposed by this section shall be collected by the authorized
3793 state fiscal officers by deducting the amount of the contribution from wages as and when paid,
3794 but failure to make such deduction shall not relieve the employee from liability for such
3795 contribution.

3796 [~~(c)~~] (3) If more or less than the correct amount of the contribution imposed by this
3797 section is paid or deducted with respect to any remuneration, proper adjustments, or refund if
3798 adjustment is impracticable, shall be made, without interest, in such manner and at such times
3799 as the state agency shall prescribe.

3800 Section 90. Section **67-11-5** is amended to read:

3801 **67-11-5. Political subdivisions of state -- Planned participation.**

3802 [~~(a)~~] (1) Each political subdivision of the state is hereby authorized to submit for
3803 approval by the state agency a plan for extending the benefits of Title II of the Social Security
3804 Act, in conformity with applicable provisions of such act, to employees of such political
3805 subdivision. Each such plan and any amendment thereof shall be approved by the state agency
3806 if it finds that such plan, or such plan as amended, is in conformity with such requirements as
3807 are provided in [~~regulations~~] rules of the state agency, except that no such plan shall be
3808 approved unless[~~==~~];

3809 [~~(+)~~] (a) it is in conformity with the requirements of the Social Security Act and with

3810 the agreement entered into under Section 67-11-3;

3811 ~~[(2)]~~ (b) it provides that all services which constitute employment as defined in Section
3812 67-11-2 and are performed in the employ of the political subdivision by employees thereof,
3813 shall be covered by the plan;

3814 ~~[(3)]~~ (c) it specifies the source or sources from which the funds necessary to make the
3815 payments required by ~~[Subsection (c) and by Subsection (d)]~~ Subsections (3) and (4) are
3816 expected to be derived and contains reasonable assurance that such sources will be adequate for
3817 such purpose;

3818 ~~[(4)]~~ (d) it provides for such methods of administration of the plan by the political
3819 subdivision as are found by the state agency to be necessary for the proper and efficient
3820 administration of the plan;

3821 ~~[(5)]~~ (e) it provides that the political subdivision will make such reports, in such form
3822 and containing such information, as the state agency may from time to time require, and
3823 comply with such provisions as the state agency or the federal security administrator may from
3824 time to time find necessary to assure the correctness and verification of such reports; and

3825 ~~[(6)]~~ (f) it authorizes the state agency to terminate the plan in its entirety, in the
3826 discretion of the state agency, if it finds that there has been a failure to comply substantially
3827 with any provision contained in such plan, such termination to take effect at the expiration of
3828 such notice and on such conditions as may be provided by ~~[regulations]~~ rules of the state
3829 agency and may be consistent with the provisions of the Social Security Act.

3830 ~~[(b)]~~ (2) The state agency shall not finally refuse to approve a plan submitted by a
3831 political subdivision under Subsection ~~[(a)]~~ (1), and shall not terminate an approved plan,
3832 without reasonable notice and opportunity for hearing to the political subdivision affected
3833 thereby.

3834 ~~[(c)]~~ (3) (a) Each political subdivision as to which a plan has been approved under this
3835 section shall pay into the Contribution Fund, with respect to wages, ~~[(c)]~~ as defined in Section
3836 67-11-2~~[(c)]~~, at such time or times as the state agency may by ~~[regulation]~~ rule prescribe,
3837 contributions in the amounts and at the rates specified in the applicable agreement entered into
3838 by the state agency under Section 67-11-3.

3839 (b) Each political subdivision required to make payment under ~~[this subsection]~~
3840 Subsection (3)(a) shall, in consideration of the employees retention in, or entry upon,

3841 employment after enactment of this [~~act~~] chapter, impose upon each of its employees, as to
 3842 services which are covered by an approved plan, a contribution with respect to his wages, [~~(c)~~]as
 3843 defined in Section 67-11-2[~~]~~], not exceeding the amount of tax which would be imposed by
 3844 Section 1400 of the Federal Insurance Contributions Act if such services constituted
 3845 employment within the meaning of that act, and to deduct the amount of such contribution
 3846 from his wages as and when paid. Contributions so collected shall be paid into the Contribution
 3847 Fund in partial discharge of the liability of such political subdivision or instrumentality under
 3848 this subsection. Failure to deduct such contribution shall not relieve the employee or employer
 3849 of liability therefor.

3850 [~~(d)~~] (4) Delinquent payments due under Subsection [~~(c)~~] (3) may, with interest at the
 3851 rate of [~~four per cent~~] 4% per annum, be recovered by action in a court of competent
 3852 jurisdiction against the political subdivision liable therefor or may, at the request of the state
 3853 agency, be deducted from any other moneys payable to such subdivision by any department,
 3854 agency or fund of the state.

3855 Section 91. Section **67-11-6** is amended to read:

3856 **67-11-6. Establishment of Contribution Fund -- Powers, authority, and**
 3857 **jurisdiction of state agency -- Withdrawals from fund -- Payments into United States**
 3858 **Treasury.**

3859 [~~(a)~~] (1) There is hereby established a special fund to be known as the Contribution
 3860 Fund. Such fund shall consist of and there shall be deposited in such fund:

3861 [~~(1)~~] (a) all contributions, interests, and penalties collected under Sections 67-11-4 and
 3862 67-11-5;

3863 [~~(2)~~] (b) all moneys appropriated thereto under this chapter;

3864 [~~(3)~~] (c) any property or securities and earnings thereof acquired through the use of
 3865 moneys belonging to the fund;

3866 [~~(4)~~] (d) interest earned upon any moneys in the fund; and

3867 [~~(5)~~] (e) all sums recovered upon the bond of the custodian or otherwise for losses
 3868 sustained by the fund and all other moneys received from the fund from any other source.

3869 (2) All moneys in the fund shall be mingled and undivided. Subject to the provisions
 3870 of this chapter, the state agency is vested with full power, authority, and jurisdiction over the
 3871 fund, including all moneys and property or securities belonging to it, and may perform any and

3872 all acts whether or not specifically designated, which are necessary to the administration of the
3873 fund and are consistent with the provisions of this chapter.

3874 ~~[(b)]~~ (3) The Contribution Fund shall be established and held separate and apart from
3875 any other funds or moneys of the state and shall be used and administered exclusively for the
3876 purpose of this chapter. Withdrawals from such fund shall be made for, and solely for:

3877 ~~[(1)]~~ (a) payment of amounts required to be paid to the secretary of the treasury of the
3878 United States pursuant to an agreement entered into under Section 67-11-3;

3879 ~~[(2)]~~ (b) payment of refunds provided for in Subsection 67-11-4~~[(e)]~~(3); and

3880 ~~[(3)]~~ (c) refunds for overpayments, not otherwise adjustable, made by a political
3881 subdivision or instrumentality.

3882 ~~[(e) From the Contribution Fund the]~~ (4) The custodian of the ~~[fund]~~ Contribution
3883 Fund shall pay to the secretary of the treasury of the United States from the Contribution Fund
3884 such amounts and at such time or times as may be directed by the state agency in accordance
3885 with any agreement entered into under Section 67-11-3 and the Social Security Act.

3886 ~~[(4)]~~ (5) The treasurer of the state shall be ex officio treasurer and custodian of the
3887 Contribution Fund and shall administer ~~[such]~~ the fund in accordance with the provisions of
3888 this chapter and the directions of the state agency and shall pay all warrants drawn upon it in
3889 accordance with the provisions of this section and with such rules as the state agency may
3890 prescribe pursuant thereto.

3891 ~~[(e)]~~ (6) In addition to the contributions collected and paid into the Contribution Fund
3892 under Sections 67-11-4 and 67-11-5, there shall be paid into the Contribution Fund such sums
3893 as are found to be necessary in order to make the payments to the secretary of the treasury
3894 which the state is obligated to make pursuant to an agreement entered into under Section
3895 67-11-3. The amount which is necessary to make the portion of such additional payment to the
3896 secretary of the treasury which is attributable to the coverage of the employees of each
3897 department, commission, council, branch, agency, or other division or organization of the state
3898 ~~[of Utah]~~ which employs persons covered by the Social Security Act pursuant to an agreement
3899 entered into under Section 67-11-3 shall be paid from the funds which have been appropriated,
3900 authorized, or allocated to such department.

3901 Section 92. Section **70A-2-504** is amended to read:

3902 **70A-2-504. Shipment by seller.**

3903 (1) Where the seller is required or authorized to send the goods to the buyer and the
3904 contract does not require him to deliver them at a particular destination, then unless otherwise
3905 agreed he must;

3906 (a) put the goods in the possession of such a carrier and make such a contract for their
3907 transportation as may be reasonable having regard to the nature of the goods and other
3908 circumstances of the case; [~~and~~]

3909 (b) obtain and promptly deliver or tender in due form any document necessary to
3910 enable the buyer to obtain possession of the goods or otherwise required by the agreement or by
3911 usage of trade; and

3912 (c) promptly notify the buyer of the shipment.

3913 (2) Failure to notify the buyer under [~~Paragraph (c)~~] Subsection (1)(c) or to make a
3914 proper contract under [~~Paragraph (a)~~] Subsection (1)(a) is a ground for rejection only if
3915 material delay or loss ensues.

3916 Section 93. Section **70A-3-312** is amended to read:

3917 **70A-3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified**
3918 **check.**

3919 (1) In this section:

3920 (a) "Check" means a cashier's check, teller's check, or certified check.

3921 (b) "Claimant" means a person who claims the right to receive the amount of a
3922 cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

3923 (c) "Declaration of loss" means a written statement, bearing a notification to the effect
3924 that false statements made in the written statement are punishable by law, to the effect that:

3925 (i) the declarer lost possession of a check;

3926 (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or
3927 the remitter or payee of the check, in the case of a cashier's check or teller's check;

3928 (iii) the loss of possession was not the result of a transfer by the declarer or a lawful
3929 seizure; and

3930 (iv) the declarer cannot reasonably obtain possession of the check because the check
3931 was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an
3932 unknown person or a person that cannot be found or is not amenable to service of process.

3933 (d) "Obligated bank" means the issuer of a cashier's check or teller's check or the

3934 acceptor of a certified check.

3935 (2) (a) A claimant may assert a claim to the amount of a check by a communication to
3936 the obligated bank describing the check with reasonable certainty and requesting payment of
3937 the amount of the check, if:

3938 (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a
3939 cashier's check or teller's check;

3940 (ii) the communication contains or is accompanied by a declaration of loss of the
3941 claimant with respect to the check;

3942 (iii) the communication is received at a time and in a manner affording the bank a
3943 reasonable time to act on it before the check is paid; and

3944 (iv) the claimant provides reasonable identification if requested by the obligated bank.

3945 (b) (i) Delivery of a declaration of loss is a warranty of the truth of the statements made
3946 in the declaration.

3947 (ii) If a claim is asserted in compliance with this Subsection (2), the ~~[following rules~~
3948 ~~apply: (i) The]~~ claim becomes enforceable at the later of:

3949 (A) the time the claim is asserted; or

3950 (B) the 90th day following the date of the check, in the case of a cashier's check or
3951 teller's check, or the 90th day following the date of the acceptance, in the case of a certified
3952 check.

3953 (c) Until the claim becomes enforceable, it has no legal effect and the obligated bank
3954 may pay the check or, in the case of a teller's check, may permit the drawee to pay the check.
3955 Payment to a person entitled to enforce the check discharges all liability of the obligated bank
3956 with respect to the check.

3957 (d) If the claim becomes enforceable before the check is presented for payment, the
3958 obligated bank is not obliged to pay the check.

3959 (e) When the claim becomes enforceable, the obligated bank becomes obliged to pay
3960 the amount of the check to the claimant if payment of the check has not been made to a person
3961 entitled to enforce the check. Subject to Subsection 70A-4-302(1)(a), payment to the claimant
3962 discharges all liability of the obligated bank with respect to the check.

3963 (3) If the obligated bank pays the amount of a check to a claimant under Subsection
3964 (2)(e) and the check is presented for payment by a person having rights of a holder in due

3965 course, the claimant is obliged to:

3966 (a) refund the payment to the obligated bank if the check is paid; or

3967 (b) pay the amount of the check to the person having rights of a holder in due course if
3968 the check is dishonored.

3969 (4) If a claimant has the right to assert a claim under Subsection (2) and is also a person
3970 entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or
3971 stolen, the claimant may assert rights with respect to the check either under this section or
3972 Section 70A-3-309.

3973 (5) This section does not apply to checks that have become the property of the state
3974 pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

3975 Section 94. Section **70A-10-102** is amended to read:

3976 **70A-10-102. Specific repealer -- Provision for transition.**

3977 (1) The following acts and all other acts and parts of acts inconsistent herewith are
3978 hereby repealed:

3979 (a) Uniform Negotiable Instruments Act, Title 44, U.C.A., 1953;

3980 (b) Uniform Warehouse Receipts Act, Title 72, U.C.A., 1953;

3981 (c) Uniform Sales Act, Title 60, U.C.A., 1953;

3982 (d) Uniform Stock Transfer Act, Title 16, Chapter 3, U.C.A., 1953;

3983 (e) Uniform Trust Receipts Act, Title 9, Chapter 2, U.C.A., 1953;

3984 (f) Title 9, Chapter 1, U.C.A., 1953;

3985 (g) Title 9, Chapter 3, U.C.A., 1953;

3986 (h) Title 25, Chapter 2, U.C.A., 1953;

3987 (i) Title 25, Chapter 3, U.C.A., 1953;

3988 (j) Title 25, Chapter 4, U.C.A., 1953; and

3989 (k) Sections 7-3-48; 7-3-49; 7-3-52; 7-3-63; 7-3-64; 7-3-65; 11-6-2; 56-1-23; 56-1-24,
3990 U.C.A., 1953.

3991 (2) Transactions validly entered into before the effective date specified in Section
3992 70A-10-101 and the rights, duties and interests flowing from them remain valid thereafter and
3993 may be terminated, completed, consummated or enforced as required or permitted by any
3994 statute or other law amended or repealed by this act as though such repeal or amendment had
3995 not occurred.

3996 Section 95. Section **70C-7-107** is amended to read:

3997 **70C-7-107. Notice of negative credit report required.**

3998 (1) As used in this section:

3999 (a) "Creditor," in addition to its definition under Section 70C-1-302, includes an agent
4000 of a creditor engaged in administering or collecting the creditor's accounts.

4001 (b) "Credit reporting agency" means any credit bureau, consumer reporting agency,
4002 association of lending institutions, association of merchants, association of other creditors, any
4003 person, firm, partnership, cooperative, or corporation which, for a fee, dues, or on a cooperative
4004 nonprofit basis, is organized for the purpose of, or regularly engages in, the gathering or
4005 evaluating of consumer credit information or other information about consumers for the
4006 purpose of reporting to third parties on the credit rating or creditworthiness of any party.

4007 (c) (i) "Negative credit report" means information reflecting on the credit history of a
4008 party that, because of the party's past delinquencies, late or irregular payment history,
4009 insolvency, or any form of default, would reasonably be expected to affect adversely the party's
4010 ability to obtain or maintain credit.

4011 (ii) Negative credit report does not include information or credit histories arising from
4012 a nonconsumer transaction or any other credit transaction outside the scope of this title, nor
4013 does it include inquiries about a consumer's record.

4014 (2) A creditor may submit a negative credit report to a credit reporting agency, only if
4015 the creditor notifies the party whose credit record is the subject of the negative report. After
4016 providing this notice, a creditor may submit additional information to a credit reporting agency
4017 respecting the same transaction or extension of credit that gave rise to the original negative
4018 credit report without providing any additional notice.

4019 (3) (a) Notice shall be in writing and shall be delivered in person or mailed first class,
4020 postage prepaid, to the party's last-known address prior to or within 30 days after the
4021 transmission of the report.

4022 (b) The notice may be part of any notice of default, billing statement, or other
4023 correspondence from the creditor to the party.

4024 (c) The notice is sufficient if it takes substantially the following form:

4025 "As required by Utah law, you are hereby notified that a negative credit report reflecting
4026 on your credit record may be submitted to a credit reporting agency if you fail to fulfill the

4027 terms of your credit obligations."

4028 (d) The notice may, in the creditor's discretion, be more specific than the form given in
4029 Subsection (3)(c). For example, the notice may provide particular information regarding an
4030 account or list the approximate date on which the creditor submitted or intends to submit a
4031 negative credit report.

4032 (4) (a) A creditor who fails to provide notice as required by this section is liable to the
4033 injured party for actual damages. In any cause of action filed to determine the liability of a
4034 creditor or damages, the prevailing party in such an action is entitled to court costs and
4035 attorney's fees.

4036 (b) If a creditor willfully violates this section, the court may award punitive damages in
4037 an amount not in excess of two times the amount of the actual damages awarded.

4038 (c) A creditor is not liable for failure to provide notice if he establishes by a
4039 preponderance of the evidence that, at the time of his failure to give notice, he maintained
4040 reasonable procedures to comply with this section.

4041 (5) A creditor is not required to comply with this section in violation of 11 U.S.C. Sec.
4042 362, as amended.

4043 Section 96. Section **73-10-23** is amended to read:

4044 **73-10-23. Loans for water systems -- Board of Water Resources authority --**
4045 **Procedure.**

4046 (1) The Board of Water Resources is authorized to make loans to cities, towns,
4047 metropolitan water districts, water conservancy districts, improvement districts, special
4048 improvement districts, or special service districts within the state for the acquisition or
4049 construction of new or existing water systems or the improvement or extension of those
4050 systems from funds appropriated for the purpose of this chapter.

4051 (2) (a) Cities, towns, or districts which participate in this program shall submit an
4052 application for funds to the Board of Water Resources.

4053 (b) The application may request a loan to cover all or part of the cost of an eligible
4054 project.

4055 (c) Requests for loans shall be submitted in a form and shall include information as the
4056 board prescribes.

4057 (3) (a) The board shall establish criteria for determining eligibility for loans and shall

4058 determine appropriate priorities among projects.

4059 (b) Funds received from the repayment of loans shall be added to this special fund and
4060 be available for additional loans under the administration of the board.

4061 ~~(c)~~ (c) In determining priorities for eligible projects, the board shall consider:

4062 ~~(a)~~ (i) probable growth of population due to actual or prospective economic
4063 development in an area;

4064 ~~(b)~~ (ii) possible additional sources of state and local revenue;

4065 ~~(c)~~ (iii) opportunities for expanded employment;

4066 ~~(d)~~ (iv) present or potential health hazards;

4067 ~~(e)~~ (v) water systems which do not meet minimum state standards;

4068 ~~(f)~~ (vi) cities, towns, or districts which have insufficient water to meet current
4069 demands;

4070 ~~(g)~~ (vii) feasibility and practicality of the project;

4071 ~~(h)~~ (viii) per capita cost of the project;

4072 ~~(i)~~ (ix) per capita income of the residents in the area;

4073 ~~(j)~~ (x) the borrowing capacity of the city, town, or district and its ability to sell bonds
4074 in the open market; and

4075 ~~(k)~~ (xi) the availability of federal funds for the project.

4076 (4) (a) The board shall consult with the Governor's Advisory Council on Community
4077 Affairs in the establishment of priorities but that advice is not binding upon the board.

4078 (b) If an application is rejected, the board shall notify the applicant stating the reasons
4079 for the rejection.

4080 ~~(3)~~ (5) The Board of Water Resources shall review the plans and specifications for
4081 the project prior to approval and may condition approval and the availability of funds on
4082 assurances the board ~~deems~~ considers necessary to ensure that the proceeds of the loan will
4083 be used to pay the cost of the project and that the project will be completed.

4084 (6) Any loan shall specify the terms for repayment and may be evidenced by general
4085 obligation bonds, revenue bonds, special assessment bonds, or other bonds or obligations
4086 legally issued by the appropriate city, town, metropolitan water district, water conservancy
4087 district, improvement district, special improvement district, or special service district and
4088 purchased by the board pursuant to the authority for the issuance that exists at the time of the

4089 loan.

4090 [~~(4)~~] (7) (a) Upon approval of an application, the board shall advise the applicant and
4091 may provide funds as a loan to cover all or part of the costs of eligible projects.

4092 (b) Costs of an eligible project may include all costs of acquisition and construction as
4093 well as costs incurred for preliminary planning to determine the economic and engineering
4094 feasibility of a proposed project, the engineering, architectural, legal, fiscal, and economic
4095 investigations and studies, surveys, designs, plans, working drawings, specifications,
4096 procedures, and other action necessary to the project and its financing; the cost of erection,
4097 building, acquisition, modification, improvement, or extension of water system facilities and
4098 the inspection and supervision of the construction of such facilities.

4099 (8) No loan shall include any project costs for which the applicant receives federal
4100 financial assistance, other than federal loans which must be repaid by the applicant.

4101 Section 97. Section **75-2-1105** is amended to read:

4102 **75-2-1105. Directive for medical services after injury or illness is incurred.**

4103 (1) (a) A person 18 years of age or older may, after incurring an injury, disease, or
4104 illness, direct his care by means of a directive made under this section, which is binding upon
4105 attending physicians and other providers of medical services.

4106 (b) When a declarant has executed a directive under Section 75-2-1104 and is in a
4107 terminal condition or a persistent vegetative state, that directive takes precedence over a
4108 nonconflicting directive executed under this section. A directive executed by an
4109 attorney-in-fact appointed under Section 75-2-1106 takes precedence over all earlier signed
4110 directives.

4111 (2) A directive made under this section shall be:

4112 (a) in writing;

4113 (b) signed by the declarant or by another person in the declarant's presence and by the
4114 declarant's expressed direction, or if the declarant does not have the ability to give current
4115 directions concerning his care and treatment, by the following persons, as proxy, in the
4116 following order of priority if no person in a prior class is available, willing, and competent to
4117 act:

4118 (i) an attorney-in-fact appointed under Section 75-2-1106;

4119 (ii) any previously appointed legal guardian of the declarant;

- 4120 (iii) the person's spouse if not legally separated;
- 4121 (iv) the parents or surviving parent;
- 4122 (v) the person's child 18 years of age or older, or if the person has more than one child,
- 4123 by a majority of the children 18 years of age or older who are reasonably available for
- 4124 consultation upon good faith efforts to secure participation of all those children;
- 4125 (vi) by the declarant's nearest reasonably available living relative 18 years of age or
- 4126 older if the declarant has no parent or child living; or
- 4127 (vii) by a legal guardian appointed for the purposes of this section;
- 4128 (c) dated;
- 4129 (d) signed, completed, and certified by the declarant's attending physician; and
- 4130 (e) signed pursuant to Subsection (2)(b) [~~above~~] in the presence of two or more
- 4131 witnesses 18 years of age or older.

- 4132 (3) Neither of the witnesses may be:
- 4133 (a) the person who signed the directive on behalf of the declarant;
- 4134 (b) related to the declarant by blood or marriage;
- 4135 (c) entitled to any portion of the declarant's estate according to the laws of intestate
- 4136 succession of this state or under any will or codicil of the declarant;
- 4137 (d) directly financially responsible for declarant's medical care; or
- 4138 (e) an agent of any health care facility in which the declarant is a patient or resident at
- 4139 the time of executing the directive.

4140 (4) A directive executed under this section shall be in substantially the following form

4141 or in a form substantially similar to the form approved by prior Utah law and shall contain a

4142 description by the attending physician of the declarant's injury, disease, or illness. It shall

4143 include specific directions for care and treatment or withholding of treatment.

4144 **DIRECTIVE TO PHYSICIANS AND PROVIDERS OF MEDICAL SERVICES**

4145 (Pursuant to Section 75-2-1105, UCA)

4146 I, _____, certify that I am serving as the attending physician for

4147 _____ of _____, who has been under my care since the ____ day of

4148 _____, _____.

4149 1. This declarant, _____, is currently suffering from

4150 the following injury, disease, or illness:

4151 _____
 4152 _____
 4153 _____

4154 2. I certify that I have explained to the declarant to the extent he is able to understand,
 4155 and to the available persons acting as proxy, the reasonable available alternatives for his care
 4156 and treatment.

4157 3. I certify that the care and treatment alternatives directed below are:

4158 _____ (a) directed by the declarant; or

4159 _____ (b) that the declarant has a physical or mental condition which renders him
 4160 unable to give personal directions for care and treatment and that the care and treatment
 4161 alternatives directed below are in my opinion, and in the opinion of the declarant's proxy, what
 4162 the declarant would probably decide if able to give current directions concerning his care and
 4163 treatment.

4164 Date: _____

4165 Signature of attending physician

4166 The following care and treatment or withholding of treatment is directed with respect to
 4167 the declarant:

4168 _____
 4169 _____
 4170 _____

4171 _____

4172 Relationship to declarant
 4173 of person signing on
 4174 declarant's behalf,
 4175 if applicable.

Signature of declarant or person
 authorized by law to sign
 directive as a proxy on
 behalf of declarant

4176 _____

4177 Address of Signer

4178 _____

4179 City, County, and State of
 4180 residence of Signer

4181 We witnesses certify that each of us is 18 years of age or older; that we personally

4182 witnessed the declarant or a proxy sign this directive; that we are acquainted with the declarant
 4183 and believe that care and treatment alternatives directed above are what the declarant has
 4184 decided for himself concerning his care and treatment, or, if the foregoing was signed by a
 4185 proxy, that we are acquainted with the proxy and believe that the proxy sincerely believes that
 4186 the care and treatment alternatives directed above are what the declarant would probably decide
 4187 for himself if he were able to give current directions concerning his care and treatment; that
 4188 neither of us signed the above directive for or on behalf of declarant; that we are not related to
 4189 the declarant by blood or marriage nor are we entitled to any portion of declarant's estate
 4190 according to the laws of intestate succession of this state or under any will or codicil of the
 4191 declarant; that we are not directly financially responsible for declarant's medical care; and that
 4192 we are not agents of any health care facility in which declarant may be a patient at the time of
 4193 signing this directive.

4194 _____
 4195 Signature of Witness

 Signature of Witness

4196 _____
 4197 Address of Witness

 Address of Witness

4198 Section 98. Section **75-3-902** is amended to read:

4199 **75-3-902. Distribution -- Order in which assets appropriated -- Abatement.**

4200 (1) Except as provided in Subsection [~~(2)~~ below] (3) and except as provided in
 4201 connection with the share of the surviving spouse who elects to take an elective share, shares of
 4202 distributees abate, without any preference or priority as between real and personal property, in
 4203 the following order:

- 4204 (a) property not disposed of by the will;
- 4205 (b) residuary devises;
- 4206 (c) general devises;
- 4207 (d) specific devises.

4208 (2) For purposes of abatement, a general devise charged on any specific property or
 4209 fund is a specific devise to the extent of the value of the property on which it is charged, and
 4210 upon the failure or insufficiency of the property on which it is charged, a general devise to the
 4211 extent of the failure or insufficiency. Abatement within each classification is in proportion to
 4212 the amounts of property each of the beneficiaries would have received if full distribution of the

4213 property had been made in accordance with the terms of the will.

4214 ~~[(2)]~~ (3) If the will expresses an order of abatement, or if the testamentary plan or the
4215 express or implied purpose of the devise would be defeated by the order of abatement stated in
4216 Subsection (1), the shares of the distributees abate as may be found necessary to give effect to
4217 the intention of the testator.

4218 ~~[(3)]~~ (4) If the subject of a preferred devise is sold or used incident to administration,
4219 abatement shall be achieved by appropriate adjustments in, or contribution from, other interests
4220 in the remaining assets.

4221 Section 99. Section ~~75-5-428~~ is amended to read:

4222 **75-5-428. Claims against protected person -- Enforcement.**

4223 (1) A conservator must pay from the estate all just claims against the estate and against
4224 the protected person arising before or after the conservatorship upon their presentation and
4225 allowance. A claim may be presented by either of the following methods:

4226 (a) The claimant may deliver or mail to the conservator a written statement of the claim
4227 indicating its basis, the name and address of the claimant, and the amount claimed[;].

4228 (b) The claimant may file a written statement of the claim, in the form prescribed by
4229 rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.
4230 A claim is ~~[deemed]~~ considered presented on the first to occur of receipt of the written
4231 statement of claim by the conservator, or the filing of the claim with the court.

4232 (2) A presented claim is allowed if it is not disallowed by written statement mailed by
4233 the conservator to the claimant within 60 days after its presentation. The presentation of a
4234 claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

4235 ~~[(2)]~~ (3) A claimant whose claim has not been paid may petition the court for
4236 determination of his claim at any time before it is barred by the applicable statute of limitation,
4237 and, upon due proof, procure an order for its allowance and payment from the estate. If a
4238 proceeding is pending against a protected person at the time of appointment of a conservator or
4239 is initiated against the protected person thereafter, the moving party must give notice of the
4240 proceeding to the conservator if the outcome is to constitute a claim against the estate.

4241 ~~[(3)]~~ (4) If it appears that the estate in conservatorship is likely to be exhausted before
4242 all existing claims are paid, preference is to be given to prior claims for the care, maintenance,
4243 and education of the protected person or his dependents and existing claims for expenses of

4244 administration.

4245 Section 100. Section **76-6-505** is amended to read:

4246 **76-6-505. Issuing a bad check or draft -- Presumption.**

4247 (1) (a) Any person who issues or passes a check or draft for the payment of money, for
4248 the purpose of obtaining from any person, firm, partnership, or corporation, any money,
4249 property, or other thing of value or paying for any services, wages, salary, labor, or rent,
4250 knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of
4251 issuing a bad check or draft.

4252 (b) For purposes of this Subsection (1), a person who issues a check or draft for which
4253 payment is refused by the drawee is presumed to know the check or draft would not be paid if
4254 he had no account with the drawee at the time of issue.

4255 (2) Any person who issues or passes a check or draft for the payment of money, for the
4256 purpose of obtaining from any person, firm, partnership, or corporation, any money, property,
4257 or other thing of value or paying for any services, wages, salary, labor, or rent, payment of
4258 which check or draft is legally refused by the drawee, is guilty of issuing a bad check or draft if
4259 he fails to make good and actual payment to the payee in the amount of the refused check or
4260 draft within 14 days of his receiving actual notice of the check or draft's nonpayment.

4261 (3) An offense of issuing a bad check or draft shall be punished as follows:

4262 (a) If the check or draft or series of checks or drafts made or drawn in this state within
4263 a period not exceeding six months amounts to a sum that is less than \$300, the offense is a
4264 class B misdemeanor.

4265 (b) If the check or draft or checks or drafts made or drawn in this state within a period
4266 not exceeding six months amounts to a sum that is or exceeds \$300 but is less than \$1,000, the
4267 offense is a class A misdemeanor.

4268 (c) If the check or draft or checks or drafts made or drawn in this state within a period
4269 not exceeding six months amounts to a sum that is or exceeds \$1,000 but is less than \$5,000,
4270 the offense is a felony of the third degree.

4271 (d) If the check or draft or checks or drafts made or drawn in this state within a period
4272 not exceeding six months amounts to a sum that is or exceeds \$5,000, the offense is a second
4273 degree felony.

4274 Section 101. Section **76-6-506.2** is amended to read:

4275 **76-6-506.2. Financial transaction card offenses -- Unlawful use of card or**
4276 **automated banking device -- False application for card.**

4277 It is unlawful for any person to:

4278 (1) knowingly, with intent to defraud, obtain or attempt to obtain credit or purchase or
4279 attempt to purchase goods, property, or services, by the use of a false, fictitious, altered,
4280 counterfeit, revoked, expired, stolen, or fraudulently obtained financial transaction card, by any
4281 financial transaction card credit number, personal identification code, or by the use of a
4282 financial transaction card not authorized by the issuer or the card holder;

4283 (2) use a financial transaction card, with intent to defraud, to knowingly and willfully
4284 exceed the actual balance of a demand or time deposit account;

4285 (3) use a financial transaction card, with intent to defraud, to willfully exceed an
4286 authorized credit line by \$500 or more, or by 50% of such line, whichever is greater;

4287 (4) willfully, with intent to defraud, deposit into his or any other account by means of
4288 an automated banking device a false, fictitious, forged, altered, or counterfeit check, draft,
4289 money order, or any other similar document;

4290 (5) make application for a financial transaction card to an issuer, while knowingly
4291 making or causing to be made a false statement or report relative to his name, occupation,
4292 financial condition, assets, or to willfully and substantially undervalue or understate any
4293 indebtedness for the purposes of influencing the issuer to issue the financial transaction card; or

4294 (6) knowingly, with intent to defraud any authorized credit card merchant, card holder,
4295 or issuer, sell or attempt to sell credit card sales drafts to an authorized credit card merchant or
4296 any other person or organization, for any consideration whether at a discount or otherwise, or
4297 present or cause to be presented to the issuer or an authorized credit card merchant, for
4298 payment or collection, any such credit card sales draft, if:

4299 [~~(i)~~] (a) the draft is counterfeit or fictitious;

4300 [~~(ii)~~] (b) the purported sales evidenced by any such credit card sales draft did not take
4301 place;

4302 [~~(iii)~~] (c) the purported sale was not authorized by the card holder;

4303 [~~(iv)~~] (d) the items or services purported to be sold as evidenced by the credit card sales
4304 drafts are not delivered or rendered to the card holder or person intended to receive them; or

4305 [~~(v)~~] (e) when delivered or rendered, the goods or services are materially different or of

4306 materially lesser value or quality than represented by the seller or his agent to the purchaser, or
4307 have substantial discrepancies from goods or services impliedly represented by the purchase
4308 price when compared with the actual goods or services delivered or rendered.

4309 Section 102. Section **76-6-603** is amended to read:

4310 **76-6-603. Detention of suspected violator by merchant -- Purposes.**

4311 (1) Any merchant who has probable cause to believe that a person has committed retail
4312 theft may detain such person, on or off the premises of a retail mercantile establishment, in a
4313 reasonable manner and for a reasonable length of time for all or any of the following purposes:

4314 [~~(1)~~] (a) to make reasonable inquiry as to whether such person has in his possession
4315 unpurchased merchandise and to make reasonable investigation of the ownership of such
4316 merchandise;

4317 [~~(2)~~] (b) to request identification;

4318 [~~(3)~~] (c) to verify such identification;

4319 [~~(4)~~] (d) to make a reasonable request of such person to place or keep in full view any
4320 merchandise such individual may have removed, or which the merchant has reason to believe
4321 he may have removed, from its place of display or elsewhere, whether for examination,
4322 purchase or for any other reasonable purpose;

4323 [~~(5)~~] (e) to inform a peace officer of the detention of the person and surrender that
4324 person to the custody of a peace officer;

4325 [~~(6)~~] (f) in the case of a minor, to inform a peace officer, the parents, guardian or other
4326 private person interested in the welfare of that minor immediately, if possible, of this detention
4327 and to surrender custody of such minor to such person.

4328 (2) A merchant may make a detention as permitted herein off the premises of a retail
4329 mercantile establishment only if such detention is pursuant to an immediate pursuit of such
4330 person.

4331 Section 103. Section **77-13-1** is amended to read:

4332 **77-13-1. Kinds of pleas.**

4333 (1) There are five kinds of pleas to an indictment or information:

4334 [~~(1)~~] (a) not guilty;

4335 [~~(2)~~] (b) guilty;

4336 [~~(3)~~] (c) no contest;

4337 ~~[(4)]~~ (d) not guilty by reason of insanity; and

4338 ~~[(5)]~~ (e) guilty and mentally ill at the time of the offense.

4339 (2) An alternative plea of not guilty or not guilty by reason of insanity may be entered.

4340 Section 104. Section **77-19-4** is amended to read:

4341 **77-19-4. Special release from city or county jail -- Conditions and limitations.**

4342 (1) All released prisoners, while absent from the jail, are in the custody of the jailer and
4343 subject at any time to being returned to jail, if good cause appears for so doing. The judge shall
4344 specify the terms and conditions of the release time which may include, but are not limited to
4345 the following:

4346 ~~[(1)]~~ (a) the prisoner may be required to pay all monies earned from employment
4347 during the jail term to those persons he is legally responsible to support; or

4348 ~~[(2) - he]~~ (b) the prisoner may be required to pay a reasonable amount for the expenses
4349 of his maintenance in the jail but may be permitted to retain sufficient money to pay his costs
4350 of transportation, meals, and other incidental and necessary expenses.

4351 (2) During all hours when the prisoner is not serving the function for which he is
4352 awarded release time, he shall be confined to jail. The prisoner shall be responsible for
4353 obtaining his own transportation to and from the place where he performs the function for
4354 which he is released.

4355 Section 105. Section **77-27-24** is amended to read:

4356 **77-27-24. Out-of-state supervision of probationers and parolees -- Compacts.**

4357 The governor of this state is authorized to execute a compact on behalf of the State of
4358 Utah with any other state legally joining therein. "State," as used in this section, includes any
4359 state, territory or possession of the United States and the District of Columbia. The compact
4360 shall be in ~~[the form]~~ substantially ~~[as follows]~~ the following form:

4361 (1) A compact entered into by and among the contracting states, signatories thereto,
4362 with the consent of the Congress of the United States of America, granted by an act entitled An
4363 Act Granting the Consent of Congress to any two or more States to enter into Agreements or
4364 Compacts for cooperative effort and mutual assistance in the prevention of crime and for other
4365 purposes.

4366 (2) The contracting states solemnly agree:

4367 ~~[Form of Compact.]~~

4368 (a) That it shall be competent for the duly constituted judicial and administrative
4369 authorities of a state party to this compact (herein called sending state) to permit any person
4370 convicted of an offense within such state and placed on probation or released on parole to
4371 reside in any other state party to this compact (herein called receiving state) while on probation
4372 or parole, if:

4373 ~~[(1) Such]~~ (i) such person is in fact a resident of or has his family residing within the
4374 receiving state and can obtain employment there~~[-]; or~~

4375 ~~[(2) Though]~~ (ii) though not a resident of the receiving state and not having his family
4376 residing there, the receiving state consents to such person being sent there.

4377 (A) Before granting such permission, opportunity shall be granted to the receiving state
4378 to investigate the home and prospective employment of such person.

4379 (B) A resident of the receiving state, within the meaning of this section, is one who has
4380 been an actual inhabitant of such state continuously for more than one year prior to his coming
4381 to the sending state and has not resided within the sending state more than six continuous
4382 months immediately preceding the commission of the offense for which he has been convicted.

4383 ~~[Receiving State to Supervise Probationers or Parolees.]~~

4384 (b) That each receiving state will assume the duties of visitation of and supervision
4385 over probationers or parolees of any sending state and in the exercise of those duties will be
4386 governed by the same standards that prevail for its own probationers and parolees.

4387 ~~[Extraditions Procedure Waived, When.]~~

4388 (c) That duly accredited officers of a sending state may at all times enter a receiving
4389 state and there apprehend and retake any person on probation or parole from such sending state.
4390 For that purpose no formalities will be required other than establishing the authority of the
4391 officer and the identity of the person to be retaken. All legal requirements to obtain extradition
4392 of fugitives from justice are expressly waived on the part of states party hereto as to such
4393 persons. The decision of the sending state to retake a person on probation (or parole) shall be
4394 conclusive upon and not reviewable within the receiving state; provided if at the time when a
4395 state seeks to retake a probationer or parolee there should be pending against him within the
4396 receiving state any criminal charge, or he should be suspected of having committed within such
4397 state a criminal offense, he shall not be retaken without the consent of the receiving state until
4398 discharged from prosecution or from imprisonment for such offense.

4399 ~~[Transporting Prisoners:]~~

4400 (d) That the duly accredited officers of the sending state will be permitted to transport
4401 prisoners being retaken through any and all states parties to this compact without interference.

4402 ~~[Rules and Regulations:]~~

4403 (e) That the governor of each state may designate an officer who, acting jointly with
4404 like officers of other contracting states, if and when appointed, shall promulgate such rules and
4405 regulations as may be deemed necessary to more effectively carry out the terms of this
4406 compact.

4407 ~~[Execution of Compact -- Effect:]~~

4408 (f) That this compact shall become operative immediately upon its execution by any
4409 state as between it and any other state or states so executing. When executed it shall have the
4410 full force and effect of law within such state, the form of execution to be in accordance with the
4411 laws of the executing state.

4412 ~~[Renunciation of Compact:]~~

4413 (g) That this compact shall continue in force and remain binding upon each executing
4414 state until renounced by it. That duties and obligations hereunder of a renouncing state shall
4415 continue as to parolees or probationers residing therein at the time of withdrawal until retaken
4416 or finally discharged by the sending state. Renunciation of this compact shall be by the same
4417 authority which executed it, on sending six months' notice in writing of intention to withdraw
4418 from the compact to the other states party thereto.

4419 Section 106. Section ~~77-27-29~~ is amended to read:

4420 **77-27-29. Rights of parolee or probationer -- Record of proceedings.**

4421 (1) With respect to any hearing pursuant to ~~[this act]~~ the Uniform Act for Out-of-State
4422 Supervision, the parolee or probationer shall have the following rights:

4423 (a) ~~[Reasonable]~~ reasonable notice in writing of the nature and content of the
4424 allegations to be made, including notice that its purpose is to determine whether there is
4425 probable cause to believe that he has committed a violation that may lead to a revocation of
4426 parole or probation[-];

4427 (b) ~~[Be]~~ be permitted to advise with any persons whose assistance he reasonably
4428 desires, prior to the hearing[-];

4429 (c) ~~[To]~~ to confront and examine any persons who have made allegations against him,

4430 unless the hearing officer determines that such confrontation would present a substantial
4431 present or subsequent danger of harm to such person or persons[-]; and

4432 (d) [~~May~~] may admit, deny, or explain the violation alleged and may present proof,
4433 including affidavits and other evidence, in support of his contentions.

4434 (2) A record of the proceedings shall be made and preserved.

4435 Section 107. Section **77-30-23** is amended to read:

4436 **77-30-23. Fugitives from this state -- Applications for requisition for return.**

4437 (1) When the return to this state of a person charged with a crime in this state is
4438 required, the prosecuting attorney shall present to the governor his written application for a
4439 requisition for the return of the person charged, in which application shall be stated the name of
4440 the person so charged, the crime charged against him, the approximate time, place, and
4441 circumstances of its commission, the state in which he is believed to be, including the location
4442 of the accused therein at the time the application is made, and certifying that in the opinion of
4443 the said prosecuting attorney the ends of justice require the arrest and return of the accused to
4444 this state for trial and that the proceeding is not instituted to enforce a private claim.

4445 (2) When the return to this state is required of a person who has been convicted of a
4446 crime in this state and has escaped from confinement or broken the terms of his bail, probation,
4447 or parole, the prosecuting attorney of the county in which the offense was committed, the
4448 parole board, or the warden of the institution or sheriff of the county from which escape was
4449 made shall present to the governor a written application for a requisition for the return of such
4450 person, in which application shall be stated the name of the person, the crime of which he was
4451 convicted, the circumstances of his escape from confinement, or of the breach of the terms of
4452 his bail, probation, or parole, the state in which he is believed to be, including the location of
4453 the person therein at the time application is made.

4454 (3) The application shall be verified by affidavit, shall be executed in duplicate, and
4455 shall be accompanied by two certified copies of the indictment returned, or information and
4456 affidavit filed, or of the complaint made to the judge or magistrate stating the offense with
4457 which the accused is charged, or of the judgment or conviction, or of the sentence.

4458 (4) The prosecuting officer, parole board, warden, or sheriff may also attach such
4459 further affidavits and other documents in duplicate as he shall deem proper to be submitted
4460 with such application. One copy of the application with the action of the governor indicated by

4461 endorsement thereon and one of the certified copies of the indictment, complaint, information,
4462 and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of
4463 the governor to remain of record in that office. The other copies of all papers shall be
4464 forwarded with the governor's requisition.

4465 Section 108. Section **77-30-25** is amended to read:

4466 **77-30-25. Person brought into state on extradition exempt from civil process --**
4467 **Waiver of extradition proceedings -- Nonwaiver by this state.**

4468 (1) A person brought into this state by or after waiver of extradition based on a criminal
4469 charge shall not be subject to service of personal process in civil actions arising out of the same
4470 facts as the criminal proceedings to answer which he is being or has been returned until he has
4471 been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable
4472 opportunity to return to the state from which he was extradited.

4473 (2) (a) Any person arrested in this state charged with having committed any crime in
4474 another state or alleged to have escaped from confinement or broken the terms of his bail,
4475 probation or parole may waive the issuance and service of the warrant provided for in Sections
4476 77-30-7 and 77-30-8, and all other procedure incidental to extradition proceedings, by
4477 executing or subscribing in the presence of a judge of any court of record within this state a
4478 writing which states that he consents to return to the demanding state; provided, before such
4479 waiver shall be executed or subscribed by such person it shall be the duty of such judge to
4480 inform such person of his rights to the issuance and service of a warrant of extradition and to
4481 obtain a writ of habeas corpus as provided for in Section 77-30-10.

4482 (b) If and when such consent has been duly executed it shall forthwith be forwarded to
4483 the office of the governor of this state and filed therein. The judge shall direct the officer
4484 having such person in custody to deliver forthwith such person to the duly accredited agent or
4485 agents of the demanding state and shall deliver or cause to be delivered to such agent or agents
4486 a copy of such consent; provided, nothing in this section shall be deemed to limit the rights of
4487 the accused person to return voluntarily and without formality to the demanding state, or shall
4488 this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or
4489 duties of the officers of the demanding state or of this state.

4490 (3) Nothing in this [act] chapter shall be deemed to constitute a waiver by this state of
4491 its right, power or privilege to try such demanded person for a crime committed within this

4492 state, or of its right, power or privilege to regain custody of such person by extradition
4493 proceedings or otherwise for the purpose of trial, sentence or punishment for any crime
4494 committed within this state, or shall any proceedings had under this [act] chapter which result
4495 in or fail to result in extradition be deemed a waiver by this state of any of its rights, privileges
4496 or jurisdiction in any way whatsoever.

4497 Section 109. Section **77-32-303** is amended to read:

4498 **77-32-303. Standard for court to appoint noncontracting attorney or defense**
4499 **resource -- Hearing.**

4500 If a county or municipality has contracted for, or otherwise made arrangements for, the
4501 legal defense of indigents, including a competent attorney and defense resources, the court may
4502 not appoint a noncontracting attorney or resource either under this part, Section [~~21-5-14.5~~]
4503 78-46-33, or Rule 15, Utah Rules of Criminal Procedure, unless the court:

4504 (1) conducts a hearing with proper notice to the responsible entity to consider the
4505 authorization or designation of a noncontract attorney or resource; and

4506 (2) makes a finding that there is a compelling reason to authorize or designate a
4507 noncontracting attorney or resources for the indigent defendant.

4508 Section 110. Section **78-13-1** is amended to read:

4509 **78-13-1. Actions respecting real property.**

4510 (1) Actions for the following causes must be tried in the county in which the subject of
4511 the action, or some part thereof, is situated, subject to the power of the court to change the
4512 place of trial as provided in this code:

4513 [~~(1)~~] (a) for the recovery of real property, or of an estate or interest therein, or for the
4514 determination in any form of such right or interest, and for injuries to real property;

4515 [~~(2)~~] (b) for the partition of real property; and

4516 [~~(3)~~] (c) for the foreclosure of all liens and mortgages on real property.

4517 (2) Where the real property is situated partly in one county and partly in another, the
4518 plaintiff may select either of the counties, and the county so selected is the proper county for
4519 the trial of such action.

4520 Section 111. Section **78-14-9.5** is amended to read:

4521 **78-14-9.5. Periodic payment of future damages in malpractice actions.**

4522 (1) As used in this section:

4523 (a) "Future damages" means a judgment creditor's damages for future medical
4524 treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and
4525 suffering.

4526 (b) "Periodic payments" means the payment of money or delivery of other property to
4527 the judgment creditor at such intervals as ordered by the court.

4528 (2) In any malpractice action against a health care provider, as defined in Section
4529 78-14-3, the court shall, at the request of any party, order that future damages which equal or
4530 exceed \$100,000, less amounts payable for attorney's fees and other costs which are due at the
4531 time of judgment, shall be paid by periodic payments rather than by a lump sum payment.

4532 (3) In rendering a judgment which orders the payment of future damages by periodic
4533 payments, the court shall order periodic payments to provide a fair correlation between the
4534 sustaining of losses and the payment of damages. Lost future earnings shall be paid over the
4535 judgment creditor's work life expectancy. The court shall also order, when appropriate, that
4536 periodic payments increase at a fixed rate, equal to the rate of inflation which the finder of fact
4537 used to determine the amount of future damages, or as measured by the most recent Consumer
4538 Price Index applicable to Utah for all goods and services. The present cash value of all
4539 periodic payments shall equal the fact finder's award of future damages, less any amount paid
4540 for attorney's fees and costs. The present cash value of periodic payments shall be determined
4541 by discounting the total amount of periodic payments projected over the judgment creditor's
4542 life expectancy, by the rate of interest which the finder of fact used to reduce the amount of
4543 future damages to present value, or the rate of interest available at the time of trial on one year
4544 U.S. Government Treasury Bills. Before periodic payments of future damages may be ordered,
4545 the court shall require a judgment debtor to post security which assures full payment of those
4546 damages. Security for payment of a judgment of periodic payments may be in one or more of
4547 the following forms:

4548 (a) a bond executed by a qualified insurer;

4549 (b) an annuity contract executed by a qualified insurer;

4550 (c) evidence of applicable and collectable liability insurance with one or more qualified
4551 insurers;

4552 (d) an agreement by one or more qualified insurers to guarantee payment of the
4553 judgment; or

4554 (e) any other form of security approved by the court.

4555 (4) Security which complies with this section may also serve as a supersedeas bond,
4556 where one is required.

4557 [~~(4)~~] (5) A judgment which orders payment of future damages by periodic payments
4558 shall specify the recipient or recipients of the payments, the dollar amount of the payments, the
4559 interval between payments, and the number of payments or the period of time over which
4560 payments shall be made. Those payments may only be modified in the event of the death of the
4561 judgment creditor.

4562 [~~(5)~~] (6) If the court finds that the judgment debtor, or the assignee of his obligation to
4563 make periodic payments, has failed to make periodic payments as ordered by the court, it shall,
4564 in addition to the required periodic payments, order the judgment debtor or his assignee to pay
4565 the judgment creditor all damages caused by the failure to make payments, including court
4566 costs and attorney's fees.

4567 [~~(6)~~] (7) The obligation to make periodic payments for all future damages, other than
4568 damages for loss of future earnings, shall cease upon the death of the judgment creditor.
4569 Damages awarded for loss of future earnings shall not be reduced or payments terminated by
4570 reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment
4571 creditor owed a duty of support, as provided by law, immediately prior to his death. In that
4572 case the court which rendered the original judgment may, upon petition of any party in interest,
4573 modify the judgment to award and apportion the unpaid future damages in accordance with this
4574 section.

4575 [~~(7)~~] (8) If security is posted in accordance with Subsection (3), and approved by a
4576 final judgment entered under this section, the judgment is considered to be satisfied, and the
4577 judgment debtor on whose behalf the security is posted shall be discharged.

4578 Section 112. Section **78-24-14** is amended to read:

4579 **78-24-14. Liability of officer making arrest.**

4580 (1) An officer is not liable for making the arrest in ignorance of the facts creating the
4581 exemption, but is liable for any subsequent detention of the witness, if such witness claims the
4582 exemption and makes an affidavit stating:

4583 [~~(1)~~] (a) that he has been served with a subpoena to attend as a witness before a court,
4584 officer or other person, specifying the same, the place of attendance and the action or

4585 proceeding in which the subpoena was issued;

4586 ~~[(2)]~~ (b) that he has not thus been served by his own procurement, with the intention of
4587 avoiding an arrest; and~~;~~]

4588 ~~[(3)]~~ (c) that he is at the time going to the place of attendance, or returning therefrom,
4589 or remaining there in obedience to the subpoena.

4590 (2) The affidavit may be taken by the officer, and exonerates him from liability for
4591 discharging the witness when arrested.

4592 Section 113. Section **78-25-16** is amended to read:

4593 **78-25-16. Parol evidence of contents of writings -- When admissible.**

4594 (1) There can be no evidence of the contents of a writing, other than the writing itself,
4595 except in the following cases:

4596 ~~[(1)]~~ (a) when the original has been lost or destroyed, in which case proof of the loss or
4597 destruction must first be made;

4598 ~~[(2)]~~ (b) when the original is in the possession of the party against whom the evidence
4599 is offered and he fails to produce it after reasonable notice;

4600 ~~[(3)]~~ (c) when the original is a record or other document in the custody of a public
4601 officer;

4602 ~~[(4)]~~ (d) when the original has been recorded, and the record or a certified copy thereof
4603 is made evidence by this code or other statute; or

4604 ~~[(5)]~~ (e) when the original consists of numerous accounts or other documents which
4605 cannot be examined in court without great loss of time, and the evidence sought from them is
4606 only the general result of the whole.

4607 (2) Provided, however, if any business, institution, member of a profession or calling,
4608 or any department or agency of government, in the regular course of business or activity has
4609 kept or recorded any memorandum, writing, entry, print, representation or combination thereof,
4610 of any act, transaction, occurrence or event, and in the regular course of business has caused
4611 any or all of the same to be recorded, copied or reproduced by any photographic, photostatic,
4612 microfilm, microcard, miniature photographic, or other process which accurately reproduces or
4613 forms a durable medium for so reproducing the original, the original may be destroyed in the
4614 regular course of business unless its preservation is required by law; and such reproduction,
4615 when satisfactorily identified, is as admissible in evidence as the original itself in any judicial

4616 or administrative proceeding whether the original is in existence or not, an enlargement or
4617 facsimile of such reproduction is likewise admissible in evidence if the original reproduction is
4618 in existence and available for inspection under direction of court. The introduction of a
4619 reproduced record, enlargement or facsimile, does not preclude admission of the original.

4620 (3) In the cases mentioned in Subsections [~~(3)~~] (1)(c) and [~~(4)~~] (d), a copy of the
4621 original, or of the record, must be produced; in those mentioned in Subsections (1)(a) and [~~(2)~~]
4622 (b), either a copy or oral evidence of the contents must be given.

4623 Section 114. Section **78-31a-121** is amended to read:

4624 **78-31a-121. Change of award by arbitrator.**

4625 (1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator
4626 may modify or correct an award:

4627 (a) on any grounds stated in Subsection 78-31a-125(1)(a) or (c);

4628 (b) if the arbitrator has not made a final and definite award upon a claim submitted by
4629 the parties to the arbitration proceeding; or

4630 (c) to clarify the award.

4631 (2) A motion under Subsection (1) must be made and notice given to all parties within
4632 20 days after the movant receives notice of the award.

4633 (3) A party to the arbitration proceeding must give notice of any objection to the
4634 motion within ten days after receipt of the notice.

4635 (4) If a motion to the court is pending under Section 78-31a-123, 78-31a-124, or
4636 78-31a-125, the court may submit the claim to the arbitrator to consider whether to modify or
4637 correct the award:

4638 (a) on any grounds stated in Subsection 78-31a-125(1)(a) or (c);

4639 (b) if the arbitrator has not made a final and definite award upon a claim submitted by
4640 the parties to the arbitration proceeding; or

4641 (c) to clarify the award.

4642 (5) An award modified or corrected pursuant to this section is subject to Subsection
4643 78-3a-120(1)[~~7~~] and Sections 78-31a-123, 78-31a-124, and [~~71-31a-125~~] 78-31a-125.

4644 Section 115. Section **78-34-4.5** is amended to read:

4645 **78-34-4.5. Negotiation and disclosure required before voting to approve an**
4646 **eminent domain action.**

4647 Each person who seeks to acquire property by eminent domain or who intends to use
4648 eminent domain to acquire property if the property cannot be acquired in a voluntary
4649 transaction shall:

4650 (1) before taking a final vote to approve the filing of an eminent domain action, make a
4651 reasonable effort to negotiate with the property owner for the purchase of the property; and

4652 (2) as early in the negotiation process under Subsection (1) as practicable but no later
4653 than 14 days before a final vote is taken to approve the filing of an eminent domain action,
4654 unless the court for good cause allows a shorter period before filing:

4655 (a) advise the property owner of the owner's rights to mediation and arbitration under
4656 Section 78-34-21, including the name and current telephone number of the property rights
4657 ombudsman, established in [~~Section 63-34-13~~] Title 13, Chapter 43, Property Rights
4658 Ombudsman Act; and

4659 (b) provide the property owner a written statement explaining that oral representations
4660 or promises made during the negotiation process are not binding upon the person seeking to
4661 acquire the property by eminent domain.

4662 Section 116. Section **78-34-9** is amended to read:

4663 **78-34-9. Occupancy of premises pending action -- Deposit paid into court --**
4664 **Procedure for payment of compensation.**

4665 (1) (a) At any time after the commencement of suit, and after giving notice to the
4666 defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion
4667 with the court requesting an order permitting the plaintiff to:

4668 (i) occupy the premises sought to be condemned pending the action, including appeal;
4669 and

4670 (ii) to do whatever work on the premises that is required.

4671 (b) Except as ordered by the court for good cause shown, a defendant may not be
4672 required to reply to a motion for immediate occupancy before expiration of the time to answer
4673 the complaint.

4674 (2) The court shall:

4675 (a) take proof by affidavit or otherwise of:

4676 (i) the value of the premises sought to be condemned;

4677 (ii) the damages that will accrue from the condemnation; and

4678 (iii) the reasons for requiring a speedy occupation; and

4679 (b) grant or refuse the motion according to the equity of the case and the relative
4680 damages that may accrue to the parties.

4681 (3) (a) If the motion is granted, the court shall enter its order requiring that the plaintiff,
4682 as a condition precedent to occupancy, file with the clerk of the court a sum equal to the
4683 condemning authority's appraised valuation of the property sought to be condemned.

4684 (b) That amount shall be for the purposes of the motion only and is not admissible in
4685 evidence on final hearing.

4686 (4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the
4687 time within which, and the terms upon which, the parties in possession are required to
4688 surrender possession to the plaintiff.

4689 (b) The court may issue orders governing encumbrances, liens, rents, assessments,
4690 insurance, and other charges, if any, as required.

4691 (5) (a) The rights of just compensation for the land taken as authorized by this section
4692 or damaged as a result of that taking vests in the parties entitled to it.

4693 (b) That compensation shall be ascertained and awarded as provided in Section
4694 78-34-10.

4695 (c) (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the
4696 just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded
4697 as the value of the property and damages, from the date of taking actual possession of the
4698 property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the
4699 date of judgment.

4700 (ii) The court may not award interest on the amount of the judgment that was paid into
4701 court.

4702 (6) (a) Upon the application of the parties in interest, the court shall order that the
4703 money deposited in the court be paid before judgment as an advance on the just compensation
4704 to be awarded in the proceeding.

4705 (b) This advance payment to a defendant shall be considered to be an abandonment by
4706 the defendant of all defenses except a claim for greater compensation.

4707 (c) If the compensation finally awarded exceeds the advance, the court shall enter
4708 judgment against the plaintiff for the amount of the deficiency.

4709 (d) If the advance received by the defendant is greater than the amount finally awarded,
4710 the court shall enter judgment against the defendant for the amount of the excess.

4711 (7) Arbitration of a dispute under Section 13-43-204 or 78-34-21 [~~or Section 63-34-13~~]
4712 is not a bar or cause to stay the action for occupancy of premises authorized by this section.

4713 Section 117. Section **78-34-21** is amended to read:

4714 **78-34-21. Dispute resolution.**

4715 (1) In any dispute between a condemner and a private property owner arising out of this
4716 chapter, the private property owner may submit the dispute for mediation or arbitration to the
4717 private property ombudsman under Section [~~63-34-13~~] 13-43-204.

4718 (2) An action submitted to the private property ombudsman under authority of this
4719 section does not bar or stay any action for occupancy of premises authorized by Section
4720 78-34-9.

4721 (3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under
4722 Section [~~63-34-13~~] 13-43-204, has standing in an action brought in district court under this
4723 chapter to file with the court a motion to stay the action during the pendency of the mediation
4724 or arbitration.

4725 (ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i)
4726 unless the mediator or arbitrator certifies at the time of filing the motion that a stay is
4727 reasonably necessary to reach a resolution of the case through mediation or arbitration.

4728 (b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order
4729 granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file
4730 with the district court a motion to terminate the stay within 30 days after:

4731 (i) the resolution of the dispute through mediation;

4732 (ii) the issuance of a final arbitration award; or

4733 (iii) a determination by the mediator or arbitrator that mediation or arbitration is not
4734 appropriate.

4735 (4) (a) The private property owner or displaced person may request that the mediator or
4736 arbitrator authorize an additional appraisal.

4737 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably
4738 necessary to reach a resolution of the case, the mediator or arbitrator may:

4739 (i) have an additional appraisal of the property prepared by an independent appraiser;

4740 and

4741 (ii) require the condemnor to pay the costs of the first additional appraisal.

4742 Section 118. Section **78-39-15** is amended to read:

4743 **78-39-15. Confirmation, modification, or vacation by court -- Effect of death of**
4744 **party before judgment.**

4745 (1) The court may confirm, change, modify or set aside the report, and if necessary
4746 appoint new referees. Upon the report being confirmed judgment must be rendered that such
4747 partition be effectual forever, which judgment is binding and conclusive:

4748 [(1)] (a) on all persons named as parties to the action, and their legal representatives,
4749 who have at the time any interest in the property divided or any part thereof, as owners in fee,
4750 or as tenants for life or for years, or as entitled to the reversion, remainder or the inheritance of
4751 such property or of any part thereof after the determination of a particular estate therein, and
4752 who by any contingency may be entitled to a beneficial interest in the property, or who have an
4753 interest in any undivided share thereof as tenants for years or for life;

4754 [(2)] (b) on all persons interested in the property who may be unknown, to whom
4755 notice of the action for partition has been given by publications; and[;]

4756 [(3)] (c) on all other persons claiming from such parties or persons, or either of them.

4757 [~~And no~~] (2) No judgment is invalid by reason of the death of any party before final
4758 judgment or decree; but such judgment or decree is as conclusive against the heirs, legal
4759 representatives or assigns of such decedent as if it had been entered before his death.

4760 Section 119. Section **78-45-7.5** is amended to read:

4761 **78-45-7.5. Determination of gross income -- Imputed income.**

4762 (1) As used in the guidelines, "gross income" includes prospective income from any
4763 source, including earned and nonearned income sources which may include salaries, wages,
4764 commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay,
4765 pensions, interest, trust income, alimony from previous marriages, annuities, capital gains,
4766 Social Security benefits, workers' compensation benefits, unemployment compensation,
4767 income replacement disability insurance benefits, and payments from "nonmeans-tested"
4768 government programs.

4769 (2) Income from earned income sources is limited to the equivalent of one full-time
4770 40-hour job. If and only if during the time prior to the original support order, the parent

4771 normally and consistently worked more than 40 hours at his job, the court may consider this
4772 extra time as a pattern in calculating the parent's ability to provide child support.

4773 (3) Notwithstanding Subsection (1), specifically excluded from gross income are:

4774 (a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment
4775 Program;

4776 (b) benefits received under a housing subsidy program, the Job Training Partnership
4777 Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food
4778 Stamps, or General Assistance; and

4779 (c) other similar means-tested welfare benefits received by a parent.

4780 (4) (a) Gross income from self-employment or operation of a business shall be
4781 calculated by subtracting necessary expenses required for self-employment or business
4782 operation from gross receipts. The income and expenses from self-employment or operation of
4783 a business shall be reviewed to determine an appropriate level of gross income available to the
4784 parent to satisfy a child support award. Only those expenses necessary to allow the business to
4785 operate at a reasonable level may be deducted from gross receipts.

4786 (b) Gross income determined under this Subsection (4) may differ from the amount of
4787 business income determined for tax purposes.

4788 (5) (a) When possible, gross income should first be computed on an annual basis and
4789 then recalculated to determine the average gross monthly income.

4790 (b) Each parent shall provide verification of current income. Each parent shall provide
4791 year-to-date pay stubs or employer statements and complete copies of tax returns from at least
4792 the most recent year unless the court finds the verification is not reasonably available.

4793 Verification of income from records maintained by the Department of Workforce Services may
4794 be substituted for pay stubs, employer statements, and income tax returns.

4795 (c) Historical and current earnings shall be used to determine whether an
4796 underemployment or overemployment situation exists.

4797 (6) Gross income includes income imputed to the parent under Subsection (7).

4798 (7) (a) Income may not be imputed to a parent unless the parent stipulates to the
4799 amount imputed, the party defaults, or, in contested cases, a hearing is held and a finding made
4800 that the parent is voluntarily unemployed or underemployed.

4801 (b) If income is imputed to a parent, the income shall be based upon employment

4802 potential and probable earnings as derived from work history, occupation qualifications, and
4803 prevailing earnings for persons of similar backgrounds in the community, or the median
4804 earning for persons in the same occupation in the same geographical area as found in the
4805 statistics maintained by the Bureau of Labor Statistics.

4806 (c) If a parent has no recent work history or [~~their~~] a parent's occupation is unknown,
4807 income shall be imputed at least at the federal minimum wage for a 40-hour work week. To
4808 impute a greater income, the judge in a judicial proceeding or the presiding officer in an
4809 administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the
4810 imputation.

4811 (d) Income may not be imputed if any of the following conditions exist:

4812 (i) the reasonable costs of child care for the parents' minor children approach or equal
4813 the amount of income the custodial parent can earn;

4814 (ii) a parent is physically or mentally disabled to the extent he cannot earn minimum
4815 wage;

4816 (iii) a parent is engaged in career or occupational training to establish basic job skills;
4817 or

4818 (iv) unusual emotional or physical needs of a child require the custodial parent's
4819 presence in the home.

4820 (8) (a) Gross income may not include the earnings of a minor child who is the subject
4821 of a child support award nor benefits to a minor child in the child's own right such as
4822 Supplemental Security Income.

4823 (b) Social Security benefits received by a child due to the earnings of a parent shall be
4824 credited as child support to the parent upon whose earning record it is based, by crediting the
4825 amount against the potential obligation of that parent. Other unearned income of a child may
4826 be considered as income to a parent depending upon the circumstances of each case.

Legislative Review Note
as of 1-10-07 5:20 PM

Office of Legislative Research and General Counsel

Legislative Committee Note

01-12-07 7:06 PM

H.B. 264

as of 01-12-07 7:06 PM

The Joint House and Senate Rules Committee recommended this bill.

H.B. 264 - Revisor's Statute

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/18/2007, 4:24:41 PM, Lead Analyst: Wardrop, T.

Office of the Legislative Fiscal Analyst