

STATE CONTRACT - FALSE CLAIMS ACT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the "Utah State Contract False Claims Act" and renames the "Utah False Claims Act" to the "Utah Medical Benefits False Claims Act".

Highlighted Provisions:

This bill:

- ▶ provides and modifies definitions;
- ▶ renames the "Utah False Claims Act" to the "Utah Medical Benefits False Claims Act";
- ▶ enacts the "Utah State Contract False Claims Act";
- ▶ amends the duties of the attorney general to provide that the attorney general shall be responsible for investigating and prosecuting violations of the chapter;
- ▶ provides that violations of the chapter are included as a basis for prosecution of a person for having a pattern of unlawful activity;
- ▶ prohibits a person from making a false statement or false representation of a material fact, or to cause the statement or representation to be made, in relation to requests for payments under a state contract;
- ▶ prohibits a person from receiving a kickback or bribe in return for, or to induce, the receipt of goods or services under a state contract;
- ▶ prohibits entering into a conspiracy to defraud the state in relation to obtaining payment under a state contract;



- 28 ▶ provides criminal and civil penalties for violations of the chapter;
- 29 ▶ provides procedures and standards for prosecution of violations and enforcement of
- 30 the chapter;
- 31 ▶ requires state agencies to report and cooperate in the investigation and enforcement
- 32 of the requirements of the chapter;
- 33 ▶ provides procedures and standards for investigations conducted under the chapter;
- 34 ▶ provides limitations on the time for bringing claims under the chapter;
- 35 ▶ requires that liability for violations committed by multiple persons shall be joint and
- 36 several;
- 37 ▶ provides a severability clause; and
- 38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill coordinates with H.B. 63, Recodification of Title 63 State Affairs in General,

43 by technically renumbering.

44 **Utah Code Sections Affected:**

45 AMENDS:

- 46 **26-20-1**, as last amended by Laws of Utah 2007, Chapter 48
- 47 **35A-3-603**, as renumbered and amended by Laws of Utah 2003, Chapter 90
- 48 **67-5-1**, as last amended by Laws of Utah 2007, Chapter 48
- 49 **76-8-1202**, as last amended by Laws of Utah 1997, Chapter 174
- 50 **76-10-1602**, as last amended by Laws of Utah 2007, Chapter 129

51 ENACTS:

- 52 **63-56b-101**, Utah Code Annotated 1953
- 53 **63-56b-102**, Utah Code Annotated 1953
- 54 **63-56b-103**, Utah Code Annotated 1953
- 55 **63-56b-104**, Utah Code Annotated 1953
- 56 **63-56b-105**, Utah Code Annotated 1953
- 57 **63-56b-106**, Utah Code Annotated 1953
- 58 **63-56b-107**, Utah Code Annotated 1953

- 59 **63-56b-108**, Utah Code Annotated 1953
- 60 **63-56b-109**, Utah Code Annotated 1953
- 61 **63-56b-110**, Utah Code Annotated 1953
- 62 **63-56b-111**, Utah Code Annotated 1953
- 63 **63-56b-112**, Utah Code Annotated 1953
- 64 **63-56b-113**, Utah Code Annotated 1953
- 65 **63-56b-114**, Utah Code Annotated 1953
- 66 **63-56b-115**, Utah Code Annotated 1953
- 67 **63-56b-116**, Utah Code Annotated 1953

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

70 Section 1. Section **26-20-1** is amended to read:

71 **CHAPTER 20. UTAH MEDICAL BENEFITS FALSE CLAIMS ACT**

72 **26-20-1. Title.**

73 This chapter is known as the "Utah Medical Benefits False Claims Act."

74 Section 2. Section **35A-3-603** is amended to read:

75 **35A-3-603. Civil liability for overpayment.**

76 (1) As used in this section, "intentionally, knowingly, and recklessly" mean the same as
77 those terms are defined in Section 76-2-103.

78 (2) Each provider, client, or other person who receives an overpayment shall,
79 regardless of fault, return the overpayment or repay its value to the department immediately:

80 (a) upon receiving written notice of the overpayment from the department; or

81 (b) upon discovering the overpayment, if that occurs prior to receiving notice.

82 (3) (a) Except as provided under Subsection (3)(b), interest on the unreturned balance
83 of the overpayment shall accrue at the rate of 1% a month.

84 (b) If the overpayment was not the fault of the person receiving it, that person is not
85 liable for interest on the unreturned balance.

86 (c) In accordance with federal law and rules made by the department, an overpayment
87 may be recovered through deductions from cash assistance, general assistance, food stamps,
88 other cash-related assistance provided to a client under this chapter, or any other means
89 provided by federal law.

90 (4) Each person who knowingly assists a client, provider, or other person in obtaining
91 an overpayment is jointly and severally liable for the overpayment.

92 (5) (a) In proving civil liability for overpayment under this section or Section
93 35A-3-605 when fault is alleged, the department shall prove by clear and convincing evidence
94 that the overpayment was obtained intentionally, knowingly, recklessly, by false statement,
95 misrepresentation, impersonation, or other fraudulent means, such as by committing any of the
96 acts or omissions described in Sections 76-8-1203 through 76-8-1205.

97 (b) If fault is established under Subsection (5)(a), Section 35A-3-605, or Title 76,
98 Chapter 8, Part 12, Public Assistance Fraud, any person who obtained or helped another obtain
99 an overpayment shall be subject to:

100 (i) a civil penalty of 10% of the amount of the overpayment; and

101 (ii) disqualification from receiving cash assistance from the Family Employment
102 Program and the general assistance program, if the overpayment was obtained from either of
103 those programs, for 12 months for the first offense, 24 months for the second offense, and
104 permanently for the third offense, or as otherwise provided by federal law; or

105 (iii) disqualification from the food stamp program, if that is the program from which
106 the overpayment was received, for 12 months for the first offense, 24 months for the second
107 offense, and permanently for the third offense, or as otherwise provided by federal law.

108 (6) If an action is filed, the department may recover, in addition to the principal sum
109 plus interest, reasonable [~~attorneys'~~ attorney] fees and costs unless the repayment obligation
110 arose from an administrative error by the department.

111 (7) If a court finds that funds or benefits were secured, in whole or part, by fraud by the
112 person from whom repayment is sought, the court shall assess an additional sum as considered
113 appropriate as punitive damages up to the amount of repayment being sought.

114 (8) Criminal actions for public assistance fraud are governed by Title 76, Chapter 8,
115 Part 12, Public Assistance Fraud.

116 (9) Jurisdiction over benefits is continuous.

117 (10) This chapter does not preclude the Department of Health from carrying out its
118 responsibilities under Title 26, Chapter 19, Medical Benefits Recovery Act, and Chapter 20,
119 Utah Medical Benefits False Claims Act.

120 Section 3. Section **63-56b-101** is enacted to read:

121 **CHAPTER 56b. UTAH STATE CONTRACT FALSE CLAIMS ACT**

122 **63-56b-101. Title.**

123 This chapter is known as the "Utah State Contract False Claims Act."

124 Section 4. Section **63-56b-102** is enacted to read:

125 **63-56b-102. Definitions.**

126 As used in this chapter:

127 (1) "Benefit" means the receipt of money, goods, or any other thing of pecuniary value.

128 (2) "Claim" means any request or demand for money or property:

129 (a) made to any:

130 (i) employee, officer, or agent of the state; or

131 (ii) contractor with the state; and

132 (b) if:

133 (i) any portion of the money or property requested or demanded was issued from or
134 provided by the state; or

135 (ii) the state will reimburse the contractor, grantee, or other recipient for any portion of
136 the money or property.

137 (3) "False statement" or "false representation" means a wholly or partially untrue
138 statement or representation which is:

139 (a) knowingly made; and

140 (b) a material fact with respect to the claim.

141 (4) "Kickback or bribe" includes a rebate, compensation, or any other form of
142 remuneration which is:

143 (a) direct or indirect;

144 (b) overt or covert; or

145 (c) in cash or in kind.

146 (5) "Knowing" and "knowingly":

147 (a) for purposes of criminal prosecutions for violations of this chapter, is one of the
148 culpable mental states described in Subsection 26-20-9(1); and

149 (b) for purposes of civil prosecutions for violations of this chapter, is the required
150 culpable mental state as defined in Subsection 26-20-9.5(1).

151 (6) "Person" has the same meaning as defined in Section 68-3-12.

152 (7) "State agency" means each executive, legislative, and judicial branch department,
153 agency, board, commission, or division, and includes a state institution of higher education as
154 defined in Section 53B-3-102.

155 (8) "State Contract" means any agreement to supply materials, construction, or services
156 to a state agency.

157 Section 5. Section **63-56b-103** is enacted to read:

158 **63-56b-103. False statement or representation.**

159 (1) A person may not make or cause to be made a false statement or false
160 representation of a material fact in an application for payment under a state contract.

161 (2) A person may not make or cause to be made a false statement or false
162 representation of a material fact for use in seeking payment under a state contract.

163 (3) A person who, having knowledge of the occurrence of an event affecting the
164 person's right to receive payment under a state contract, may not conceal or fail to disclose that
165 event with intent to obtain a payment:

166 (a) to which the person is not entitled; or

167 (b) in an amount greater than that to which the person is entitled.

168 Section 6. Section **63-56b-104** is enacted to read:

169 **63-56b-104. Kickbacks or bribes prohibited.**

170 (1) A person may not solicit, offer, pay, or receive a kickback or bribe in return for or
171 to induce the purchasing, leasing, or ordering of any goods or services for which payment is or
172 may be made, in whole or in part, pursuant to a state contract.

173 (2) The culpable mental state required for a criminal violation of this chapter for
174 kickbacks or bribes under this section is knowingly and intentionally as defined in Section
175 76-2-103.

176 Section 7. Section **63-56b-105** is enacted to read:

177 **63-56b-105. False statements or false representations relating to state contract**
178 **prohibited -- Criminal penalties.**

179 (1) A person may not knowingly, intentionally, or recklessly make, induce, or seek to
180 induce, the making of a false statement or false representation of a material fact with respect to
181 the performance of or a payment made under a state contract.

182 (2) A person who violates this section is guilty of a second degree felony.

183 Section 8. Section **63-56b-106** is enacted to read:

184 **63-56b-106. Conspiracy to defraud prohibited.**

185 A person may not enter into an agreement, combination, or conspiracy to defraud the
186 state by obtaining, or aiding another to obtain, the payment or allowance of a false, fictitious, or
187 fraudulent claim for payment under a state contract payment.

188 Section 9. Section **63-56b-107** is enacted to read:

189 **63-56b-107. False claims relating to contract prohibited.**

190 (1) A person may not make or present, or cause to be made or presented, to an
191 employee or officer of the state, a claim for payment under a state contract:

192 (a) which is wholly or partially false, fictitious, or fraudulent;

193 (b) for services which were not rendered or for items or materials which were not
194 delivered;

195 (c) which misrepresents the type, quality, or quantity of items or services rendered;

196 (d) for items or services which the person knew were not reasonably necessary in
197 accordance with professionally recognized standards; or

198 (e) which has previously been made.

199 (2) In addition to the prohibitions in Subsection (1), a person may not:

200 (a) falsify or alter, with intent to deceive, any report or document required by the state
201 contract, or by state or federal law;

202 (b) retain any unauthorized payment as a result of acts described under this section; or

203 (c) aid or abet the commission of any act prohibited by this section.

204 Section 10. Section **63-56b-108** is enacted to read:

205 **63-56b-108. Knowledge of past acts not necessary to establish fact that false**
206 **statement or representation knowingly made.**

207 In prosecution under this chapter, in order to establish the fact that a false statement or
208 representation was knowingly made, it shall not be necessary to show that:

209 (1) the person had knowledge of similar acts having been performed in the past on the
210 part of persons acting on his behalf; or

211 (2) the person had actual notice that the acts by the persons acting on his behalf
212 occurred.

213 Section 11. Section **63-56b-109** is enacted to read:

214 **63-56b-109. Criminal penalties.**

215 (1) Except as provided in Section 63-56b-104, the culpable mental state required for a
216 criminal violation of this chapter is knowingly, intentionally, or recklessly as defined in Section
217 76-2-103.

218 (2) The punishment for a criminal violation of any provision of this chapter, except as
219 provided under Section 63-56b-105, is determined by the cumulative value of the funds or
220 other benefits received or claimed in the commission of all violations of a similar nature, and
221 not by each separate violation.

222 (3) Except as provided under Section 63-56b-105, punishment for criminal violation of
223 this chapter shall be based on the dollar amounts as prescribed by Subsection 76-6-412(1) for
224 theft of property and services.

225 Section 12. Section **63-56b-110** is enacted to read:

226 **63-56b-110. Civil penalties.**

227 (1) The culpable mental state required for a civil violation of this chapter is "knowing"
228 or "knowingly" which:

229 (a) means that person, with respect to information:

230 (i) has actual knowledge of the information;

231 (ii) acts in deliberate ignorance of the truth or falsity of the information; or

232 (iii) acts in reckless disregard of the truth or falsity of the information; and

233 (b) does not require a specific intent to defraud.

234 (2) Any person who violates this chapter shall, in all cases, in addition to other
235 penalties provided by law, be required to:

236 (a) make full and complete restitution to the state of all damages that the state sustains
237 because of the person's violation of this chapter;

238 (b) pay to the state its costs of enforcement of this chapter in that case, including but
239 not limited to the cost of investigators, attorneys, and other public employees, as determined by
240 the state; and

241 (c) pay to the state a civil penalty equal to:

242 (i) three times the amount of damages that the state sustains because of the person's
243 violation of this chapter; and

244 (ii) not less than \$5,000 or more than \$10,000 for each claim filed or act done in

245 violation of this chapter.

246 (3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as
247 part of its judgment in both criminal and civil actions.

248 (4) A criminal action need not be brought against a person in order for that person to be
249 civilly liable under this section.

250 Section 13. Section **63-56b-111** is enacted to read:

251 **63-56b-111. Presumption based on paid state warrant -- Repayment of benefit**
252 **received.**

253 (1) In any civil or criminal action brought under this chapter, a paid state warrant, made
254 payable to the order of a party, creates a presumption that the party received funds from the
255 state.

256 (2) In any criminal action under this chapter:

257 (a) the value of materials or benefits received shall be the ordinary or usual charge for
258 similar materials or benefits in the private sector; and

259 (b) the repayment of funds or other benefits obtained in violation of the provisions of
260 this chapter does not constitute a defense to, or grounds for, dismissal of that action.

261 Section 14. Section **63-56b-112** is enacted to read:

262 **63-56b-112. Violation of other laws.**

263 The provisions of this chapter:

264 (1) are not exclusive, and the remedies provided for in this chapter are in addition to
265 any other remedies provided for under:

266 (a) any other applicable law; or

267 (b) common law; and

268 (2) are to be liberally construed and applied to:

269 (a) effectuate the chapter's remedial and deterrent purposes; and

270 (b) serve the public interest.

271 Section 15. Section **63-56b-113** is enacted to read:

272 **63-56b-113. State contract fraud enforcement.**

273 (1) This chapter shall be enforced in accordance with this section.

274 (2) Each state agency is responsible for:

275 (a) (i) investigating and prosecuting suspected civil violations of this chapter; or

276 (ii) referring suspected civil violations of this chapter to the attorney general for
277 investigation and prosecution; and

278 (b) promptly referring suspected criminal violations of this chapter to the attorney
279 general for criminal investigation and prosecution.

280 (3) The attorney general has:

281 (a) concurrent jurisdiction with the state agency for investigating and prosecuting
282 suspected civil violations of this chapter; and

283 (b) exclusive jurisdiction to investigate and prosecute all suspected criminal violations
284 of this chapter.

285 (4) (a) Any violation of this chapter which comes to the attention of any state
286 government officer or state agency shall be reported to the attorney general or the department.

287 (b) All state government officers and state agencies shall cooperate with and assist in
288 any prosecution for violation of this chapter.

289 Section 16. Section **63-56b-114** is enacted to read:

290 **63-56b-114. Investigations -- Civil investigative demands.**

291 (1) The attorney general may take investigative action under Subsection (2) if the
292 attorney general has reason to believe that:

293 (a) a person has information or custody or control of documentary material relevant to
294 the subject matter of an investigation of an alleged violation of this chapter;

295 (b) a person is committing, has committed, or is about to commit a violation of this
296 chapter; or

297 (c) it is in the public interest to conduct an investigation to ascertain whether or not a
298 person is committing, has committed, or is about to commit a violation of this chapter.

299 (2) In taking investigative action, the attorney general may:

300 (a) require the person to file on a prescribed form a statement in writing, under oath or
301 affirmation, describing:

302 (i) the facts and circumstances concerning the alleged violation of this chapter; and

303 (ii) other information considered necessary by the attorney general;

304 (b) examine a person under oath in connection with the alleged violation of this
305 chapter; and

306 (c) in accordance with Subsections (7) through (18), execute in writing, and serve on

307 the person, a civil investigative demand requiring the person to produce the documentary
308 material and permit inspection and copying of the material.

309 (3) The attorney general may not release or disclose information that is obtained under
310 Subsection (2)(a) or (b), or any documentary material or other record derived from the
311 information obtained under Subsection (2)(a) or (b), except:

312 (a) by court order for good cause shown;

313 (b) with the consent of the person who provided the information;

314 (c) to an employee of the attorney general or the state agency;

315 (d) to an agency of this state, the United States, or another state;

316 (e) to a special assistant attorney general representing the state in a civil action;

317 (f) to a political subdivision of this state; or

318 (g) to a person authorized by the attorney general to receive the information.

319 (4) The attorney general may use documentary material derived from information
320 obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general
321 determines necessary in the enforcement of this chapter, including presentation before a court.

322 (5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to
323 submit to an examination as required by Subsection (2)(b), the attorney general may file a
324 complaint in district court for an order to compel the person to, within a period stated by court
325 order:

326 (i) file the statement required by Subsection (2)(a); or

327 (ii) submit to the examination required by Subsection (2)(b).

328 (b) Failure to comply with an order entered under Subsection (5)(a) is punishable as
329 contempt.

330 (6) A civil investigative demand must:

331 (a) state the rule or statute under which the alleged violation of this chapter is being
332 investigated;

333 (b) describe the:

334 (i) general subject matter of the investigation; and

335 (ii) class or classes of documentary material to be produced with reasonable specificity
336 to fairly indicate the documentary material demanded;

337 (c) designate a date within which the documentary material is to be produced; and

338 (d) identify an authorized employee of the attorney general to whom the documentary
339 material is to be made available for inspection and copying.

340 (7) A civil investigative demand may require disclosure of any documentary material
341 that is discoverable under the Utah Rules of Civil Procedure.

342 (8) Service of a civil investigative demand may be made by:

343 (a) delivering an executed copy of the demand to the person to be served, or to a
344 partner, officer, or agent authorized by appointment or by law to receive service of process on
345 behalf of that person;

346 (b) delivering an executed copy of the demand to the principal place of business in this
347 state of the person to be served; or

348 (c) mailing by registered or certified mail an executed copy of the demand addressed to
349 the person to be served:

350 (i) at the person's principal place of business in this state; or

351 (ii) if the person has no place of business in this state, to the person's principal office or
352 place of business.

353 (9) Documentary material demanded in a civil investigative demand shall be produced
354 for inspection and copying during normal business hours at the office of the attorney general or
355 as agreed by the person served and the attorney general.

356 (10) The attorney general may not produce for inspection or copying, or otherwise
357 disclose, the contents of documentary material obtained pursuant to a civil investigative
358 demand except:

359 (a) by court order for good cause shown;

360 (b) with the consent of the person who produced the information;

361 (c) to an employee of the attorney general or the state agency;

362 (d) to an agency of this state, the United States, or another state;

363 (e) to a special assistant attorney general representing the state in a civil action;

364 (f) to a political subdivision of this state; or

365 (g) to a person authorized by the attorney general to receive the information.

366 (11) (a) With respect to documentary material obtained pursuant to a civil investigative
367 demand, the attorney general shall prescribe reasonable terms and conditions allowing the
368 documentary material to be available for inspection and copying by the person who produced

369 the material or by an authorized representative of that person.

370 (b) The attorney general may use the documentary material or copies of it as the
371 attorney general determines necessary in the enforcement of this chapter, including presentation
372 before a court.

373 (12) A person may file a complaint, stating good cause, to extend the return date for the
374 demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be
375 filed in district court and must be filed before the earlier of:

376 (a) the return date specified in the demand; or

377 (b) the 20th day after the date the demand is served.

378 (13) Except as provided by court order, a person who has been served with a civil
379 investigative demand shall comply with the terms of the demand.

380 (14) (a) A person who has entered into a state contract has submitted to the jurisdiction
381 of this state.

382 (b) Personal service of a civil investigative demand under this section may be made on
383 the person described in Subsection (14)(a) outside of this state.

384 (15) This section does not limit the authority of the attorney general to conduct
385 investigations or to access a person's documentary materials or other information under another
386 state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

387 (16) The attorney general may file a complaint in district court for an order to enforce
388 the civil investigative demand if:

389 (a) a person fails to comply with a civil investigative demand; or

390 (b) copying and reproduction of the documentary material demanded:

391 (i) cannot be satisfactorily accomplished; and

392 (ii) the person refuses to surrender the documentary material.

393 (17) If a complaint is filed under Subsection (16), the court may determine the matter
394 presented and may enter an order to enforce the civil investigative demand.

395 (18) Failure to comply with a final order entered under Subsection (17) is punishable
396 by contempt.

397 Section 17. Section **63-56b-115** is enacted to read:

398 **63-56b-115. Limitation of actions -- Civil acts antedating this section -- Civil**
399 **burden of proof -- Estoppel -- Joint civil liability --Venue.**

400 (1) An action under this chapter may not be brought after the later of:
401 (a) six years after the date on which the violation was committed; or
402 (b) three years after the date an official of the state charged with responsibility to act in
403 the circumstances discovers the violation, but in no event more than ten years after the date on
404 which the violation was committed.

405 (2) A civil action brought under this chapter may be brought for acts occurring prior to
406 the effective date of this section if the limitations period set forth in Subsection (1) has not
407 lapsed.

408 (3) In any civil action brought under this chapter the state shall be required to prove by
409 a preponderance of evidence, all essential elements of the cause of action including damages.

410 (4) Notwithstanding any other provision of law, a final judgment rendered in favor of
411 the state in any criminal proceeding under this chapter, whether upon a verdict after trial or
412 upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential
413 elements of the offense in any civil action under this chapter which involves the same
414 transaction.

415 (5) Civil liability under this chapter shall be joint and several for a violation committed
416 by two or more persons.

417 (6) Any action brought by the state under this chapter shall be brought in district court
418 in:

419 (a) Salt Lake County; or

420 (b) any county where the defendant resides or does business.

421 Section 18. Section **63-56b-116** is enacted to read:

422 **63-56b-116. Severability.**

423 If any provision of this chapter or the application of this chapter to any person or
424 circumstance is held unconstitutional:

425 (1) the remaining provisions of this chapter shall not be affected; and

426 (2) the application of this chapter to other persons or circumstances shall not be
427 affected.

428 Section 19. Section **67-5-1** is amended to read:

429 **67-5-1. General duties.**

430 The attorney general shall:

431 (1) perform all duties in a manner consistent with the attorney-client relationship under
432 Section 67-5-17;

433 (2) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court
434 and the Court of Appeals of this state, and all courts of the United States, and prosecute or
435 defend all causes to which the state, or any officer, board, or commission of the state in an
436 official capacity is a party; and take charge, as attorney, of all civil legal matters in which the
437 state is interested;

438 (3) after judgment on any cause referred to in Subsection (2), direct the issuance of
439 process as necessary to execute the judgment;

440 (4) account for, and pay over to the proper officer, all moneys that come into the
441 attorney general's possession that belong to the state;

442 (5) keep a file of all cases in which the attorney general is required to appear, including
443 any documents and papers showing the court in which the cases have been instituted and tried,
444 and whether they are civil or criminal, and:

445 (a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to
446 judgment, a memorandum of the judgment and of any process issued whether satisfied, and if
447 not satisfied, the return of the sheriff;

448 (b) if criminal, the nature of the crime, the mode of prosecution, the stage of
449 proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the
450 execution, if the sentence has been executed, if not executed, of the reason of the delay or
451 prevention; and

452 (c) deliver this information to the attorney general's successor in office;

453 (6) exercise supervisory powers over the district and county attorneys of the state in all
454 matters pertaining to the duties of their offices, and from time to time require of them reports of
455 the condition of public business entrusted to their charge;

456 (7) give the attorney general's opinion in writing and without fee to the Legislature or
457 either house, and to any state officer, board, or commission, and to any county attorney or
458 district attorney, when required, upon any question of law relating to their respective offices;

459 (8) when required by the public service or directed by the governor, assist any county,
460 district, or city attorney in the discharge of his duties;

461 (9) purchase in the name of the state, under the direction of the state Board of

462 Examiners, any property offered for sale under execution issued upon judgments in favor of or
463 for the use of the state, and enter satisfaction in whole or in part of the judgments as the
464 consideration of the purchases;

465 (10) when the property of a judgment debtor in any judgment mentioned in Subsection
466 (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance
467 taking precedence of the judgment in favor of the state, redeem the property, under the
468 direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and
469 pay all money necessary for the redemption, upon the order of the state Board of Examiners,
470 out of any money appropriated for these purposes;

471 (11) when in his opinion it is necessary for the collection or enforcement of any
472 judgment, institute and prosecute on behalf of the state any action or proceeding necessary to
473 set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the
474 cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any
475 money not otherwise appropriated;

476 (12) discharge the duties of a member of all official boards of which the attorney
477 general is or may be made a member by the Utah Constitution or by the laws of the state, and
478 other duties prescribed by law;

479 (13) institute and prosecute proper proceedings in any court of the state or of the
480 United States, to restrain and enjoin corporations organized under the laws of this or any other
481 state or territory from acting illegally or in excess of their corporate powers or contrary to
482 public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations,
483 and wind up their affairs;

484 (14) institute investigations for the recovery of all real or personal property that may
485 have escheated or should escheat to the state, and for that purpose, subpoena any persons
486 before any of the district courts to answer inquiries and render accounts concerning any
487 property, examine all books and papers of any corporations, and when any real or personal
488 property is discovered that should escheat to the state, institute suit in the district court of the
489 county where the property is situated for its recovery, and escheat that property to the state;

490 (15) administer the Children's Justice Center as a program to be implemented in
491 various counties pursuant to ~~[Sections 67-5b-101 through 67-5b-107]~~ Title 67, Chapter 5b,
492 Children's Justice Center Program;

493 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4,
494 Constitutional Defense Council;

495 (17) pursue any appropriate legal action to implement the state's public lands policy
496 established in Subsection 63C-4-105(1);

497 (18) investigate and prosecute violations of all applicable state laws relating to fraud in
498 connection with;

499 (a) the state Medicaid program and any other medical assistance program administered
500 by the state, including violations of Title 26, Chapter 20, Utah Medical Benefits False Claims
501 Act; and

502 (b) contracts with state agencies as provided in Title 63, Chapter 56b, Utah State
503 Contract False Claims Act;

504 (19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients
505 at:

506 (a) health care facilities that receive payments under the state Medicaid program; and

507 (b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C.

508 Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility; and

509 (20) (a) report at least twice per year to the Legislative Management Committee on any
510 pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

511 (i) cost the state more than \$500,000; or

512 (ii) require the state to take legally binding action that would cost more than \$500,000
513 to implement; and

514 (b) if the meeting is closed, include an estimate of the state's potential financial or other
515 legal exposure in that report.

516 Section 20. Section **76-8-1202** is amended to read:

517 **76-8-1202. Application of part.**

518 (1) This part does not apply to offenses by:

519 (a) providers under the state's Medicaid program that are actionable under Title 26,
520 Chapter 20, Utah Medical Benefits False Claims Act[-]; or

521 (b) persons whose actions are actionable under Title 63, Chapter 56b, Utah State
522 Contract False Claims Act.

523 (2) (a) Section 35A-1-503 applies to criminal actions taken under this part.

524 (b) The repayment of funds or other benefits obtained in violation of the provisions of
525 this chapter shall not constitute a defense or grounds for dismissal of a criminal action.

526 Section 21. Section **76-10-1602** is amended to read:

527 **76-10-1602. Definitions.**

528 As used in this part:

529 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
530 business trust, association, or other legal entity, and any union or group of individuals
531 associated in fact although not a legal entity, and includes illicit as well as licit entities.

532 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
533 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
534 have the same or similar purposes, results, participants, victims, or methods of commission, or
535 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
536 demonstrate continuing unlawful conduct and be related either to each other or to the
537 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
538 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
539 activity as defined by this part shall have occurred within five years of the commission of the
540 next preceding act alleged as part of the pattern.

541 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
542 interest in property, including state, county, and local governmental entities.

543 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
544 command, encourage, or intentionally aid another person to engage in conduct which would
545 constitute any offense described by the following crimes or categories of crimes, or to attempt
546 or conspire to engage in an act which would constitute any of those offenses, regardless of
547 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
548 or a felony:

549 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
550 Recording Practices Act;

551 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
552 Code, Sections 19-1-101 through 19-7-109;

553 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
554 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, [~~Chapter 13,~~] Wildlife

555 Resources Code of Utah, or Section 23-20-4;

556 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
557 26, Chapter 20, Utah Medical Benefits False Claims Act, Sections 26-20-1 through 26-20-12;

558 (e) any act prohibited by Title 63, Chapter 56b, Utah State Contract False Claims Act;

559 ~~(e)~~ (f) any act prohibited by the criminal provisions of Title 32A, Chapter 12,
560 Criminal Offenses;

561 ~~(f)~~ (g) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah
562 Uniform Land Sales Practices Act;

563 ~~(g)~~ (h) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
564 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
565 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
566 Clandestine Drug Lab Act;

567 ~~(h)~~ (i) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah
568 Uniform Securities Act;

569 ~~(i)~~ (j) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
570 Procurement Code;

571 ~~(j)~~ (k) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

572 ~~(k)~~ (l) a terroristic threat, Section 76-5-107;

573 ~~(l)~~ (m) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

574 ~~(m)~~ (n) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

575 ~~(n)~~ (o) sexual exploitation of a minor, Section 76-5a-3;

576 ~~(o)~~ (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

577 ~~(p)~~ (q) causing a catastrophe, Section 76-6-105;

578 ~~(q)~~ (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

579 ~~(r)~~ (s) burglary of a vehicle, Section 76-6-204;

580 ~~(s)~~ (t) manufacture or possession of an instrument for burglary or theft, Section
581 76-6-205;

582 ~~(t)~~ (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

583 ~~(u)~~ (v) theft, Section 76-6-404;

584 ~~(v)~~ (w) theft by deception, Section 76-6-405;

585 ~~(w)~~ (x) theft by extortion, Section 76-6-406;

586 [~~(x)~~] (y) receiving stolen property, Section 76-6-408;
587 [~~(y)~~] (z) theft of services, Section 76-6-409;
588 [~~(z)~~] (aa) forgery, Section 76-6-501;
589 [~~(aa)~~] (bb) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and
590 76-6-506.4;
591 [~~(bb)~~] (cc) deceptive business practices, Section 76-6-507;
592 [~~(cc)~~] (dd) bribery or receiving bribe by person in the business of selection, appraisal,
593 or criticism of goods, Section 76-6-508;
594 [~~(dd)~~] (ee) bribery of a labor official, Section 76-6-509;
595 [~~(ee)~~] (ff) defrauding creditors, Section 76-6-511;
596 [~~(ff)~~] (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
597 [~~(gg)~~] (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
598 [~~(hh)~~] (ii) bribery or threat to influence contest, Section 76-6-514;
599 [~~(ii)~~] (jj) making a false credit report, Section 76-6-517;
600 [~~(jj)~~] (kk) criminal simulation, Section 76-6-518;
601 [~~(kk)~~] (ll) criminal usury, Section 76-6-520;
602 [~~(ll)~~] (mm) fraudulent insurance act, Section 76-6-521;
603 [~~(mm)~~] (nn) retail theft, Section 76-6-602;
604 [~~(nn)~~] (oo) computer crimes, Section 76-6-703;
605 [~~(oo)~~] (pp) identity fraud, Section 76-6-1102;
606 [~~(pp)~~] (qq) sale of a child, Section 76-7-203;
607 [~~(qq)~~] (rr) bribery to influence official or political actions, Section 76-8-103;
608 [~~(rr)~~] (ss) threats to influence official or political action, Section 76-8-104;
609 [~~(ss)~~] (tt) receiving bribe or bribery by public servant, Section 76-8-105;
610 [~~(tt)~~] (uu) receiving bribe or bribery for endorsement of person as public servant,
611 Section 76-8-106;
612 [~~(uu)~~] (vv) official misconduct, Sections 76-8-201 and 76-8-202;
613 [~~(vv)~~] (ww) obstruction of justice, Section 76-8-306;
614 [~~(ww)~~] (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section
615 76-8-308;
616 [~~(xx)~~] (yy) false or inconsistent material statements, Section 76-8-502;

617 [~~(yy)~~] (zz) false or inconsistent statements, Section 76-8-503;
618 [~~(zz)~~] (aaa) written false statements, Section 76-8-504;
619 [~~(aaa)~~] (bbb) tampering with a witness or soliciting or receiving a bribe, Section
620 76-8-508;
621 [~~(bbb)~~] (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
622 [~~(ccc)~~] (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
623 [~~(ddd)~~] (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
624 76-8-1205;
625 [~~(eee)~~] (fff) unemployment insurance fraud, Section 76-8-1301;
626 [~~(fff)~~] (ggg) intentionally or knowingly causing one animal to fight with another,
627 Subsection 76-9-301(1)(f);
628 [~~(ggg)~~] (hhh) possession, use, or removal of explosives, chemical, or incendiary
629 devices or parts, Section 76-10-306;
630 [~~(hhh)~~] (iii) delivery to common carrier, mailing, or placement on premises of an
631 incendiary device, Section 76-10-307;
632 [~~(iii)~~] (iii) possession of a deadly weapon with intent to assault, Section 76-10-507;
633 [~~(jjj)~~] (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
634 [~~(kkk)~~] (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
635 [~~(lll)~~] (mmm) forging or counterfeiting trademarks, trade name, or trade device,
636 Section 76-10-1002;
637 [~~(mmm)~~] (nnn) selling goods under counterfeited trademark, trade name, or trade
638 devices, Section 76-10-1003;
639 [~~(nnn)~~] (ooo) sales in containers bearing registered trademark of substituted articles,
640 Section 76-10-1004;
641 [~~(ooo)~~] (ppp) selling or dealing with article bearing registered trademark or service
642 mark with intent to defraud, Section 76-10-1006;
643 [~~(ppp)~~] (qqq) gambling, Section 76-10-1102;
644 [~~(qqq)~~] (rrr) gambling fraud, Section 76-10-1103;
645 [~~(rrr)~~] (sss) gambling promotion, Section 76-10-1104;
646 [~~(sss)~~] (ttt) possessing a gambling device or record, Section 76-10-1105;
647 [~~(ttt)~~] (uuu) confidence game, Section 76-10-1109;

648 [~~(uuu)~~] (vvv) distributing pornographic material, Section 76-10-1204;
649 [~~(vvv)~~] (www) inducing acceptance of pornographic material, Section 76-10-1205;
650 [~~(www)~~] (xxx) dealing in harmful material to a minor, Section 76-10-1206;
651 [~~(xxx)~~] (yyy) distribution of pornographic films, Section 76-10-1222;
652 [~~(yyy)~~] (zzz) indecent public displays, Section 76-10-1228;
653 [~~(zzz)~~] (aaa) prostitution, Section 76-10-1302;
654 [~~(aaa)~~] (bbb) aiding prostitution, Section 76-10-1304;
655 [~~(bbb)~~] (ccc) exploiting prostitution, Section 76-10-1305;
656 [~~(ccc)~~] (ddd) aggravated exploitation of prostitution, Section 76-10-1306;
657 [~~(ddd)~~] (eee) communications fraud, Section 76-10-1801;
658 [~~(eee)~~] (fff) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part
659 19, Money Laundering and Currency Transaction Reporting Act;
660 [~~(fff)~~] (ggg) any act prohibited by the criminal provisions of the laws governing
661 taxation in this state; and
662 [~~(ggg)~~] (hhh) any act illegal under the laws of the United States and enumerated in
663 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

Section 22. **Coordinating S.B. 213 with H.B. 63 -- Technical renumbering.**

If this S.B. 213 and H.B. 63, Recodification of Title 63 State Affairs in General, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

- 668 (1) renumber Sections 63-56b-101 through 63-56b-116 to 63G-11-101 through
- 669 63G-11-116;
- 670 (2) change all internal cross references; and
- 671 (3) change all references to "Title 63, Chapter 56b" to "Title 63G, Chapter 11."

Legislative Review Note
as of 2-1-08 11:25 AM

Office of Legislative Research and General Counsel