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₵ 01-19-09 10:46 AM ₵

H.B. 250

REVISOR'S STATUTE

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill modifies parts of the Utah Code to make technical corrections including eliminating references to repealed provisions, making minor wording changes, updating cross references, and correcting numbering.

Highlighted Provisions:

This bill:

- modifies parts of the Utah Code to make technical corrections including eliminating references to repealed provisions, making minor wording changes, updating cross references, and correcting numbering.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-1-104, as last amended by Laws of Utah 2007, Chapter 306

7-1-505, as last amended by Laws of Utah 1983, Chapter 8

7-7-38, as last amended by Laws of Utah 1994, Chapter 200

9-3-403, as last amended by Laws of Utah 2004, Chapter 18

17-27a-703, as last amended by Laws of Utah 2008, Chapter 326

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17D-1-106, as enacted by Laws of Utah 2008, Chapter 360
17D-1-301, as enacted by Laws of Utah 2008, Chapter 360
17D-2-506, as enacted by Laws of Utah 2008, Chapter 360
19-2-103, as last amended by Laws of Utah 2008, Chapter 250
19-6-302, as last amended by Laws of Utah 2005, Chapter 200
19-6-310, as last amended by Laws of Utah 1995, Chapter 324
19-8-119, as enacted by Laws of Utah 2005, Chapter 200
32A-1-119.5, as enacted by Laws of Utah 2008, Chapter 317
32A-5-107, as last amended by Laws of Utah 2008, Chapters 266 and 391
32A-8-101, as last amended by Laws of Utah 2008, Chapter 391
36-11-103, as last amended by Laws of Utah 2008, Chapter 382
38-8-1, as last amended by Laws of Utah 2006, Chapter 42
51-9-405, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382
51-9-504, as enacted by Laws of Utah 2008, Chapter 202
53-3-102, as last amended by Laws of Utah 2008, Chapter 322
53-3-204, as last amended by Laws of Utah 2008, Chapters 3, 250, and 304
53-3-205, as last amended by Laws of Utah 2008, Chapters 304 and 382
53-10-208, as last amended by Laws of Utah 2008, Chapter 3
53-10-208.1, as last amended by Laws of Utah 2008, Chapter 3
53B-8a-105, as last amended by Laws of Utah 2007, Chapter 100
58-60-114, as last amended by Laws of Utah 2008, Chapter 3
58-60-509, as last amended by Laws of Utah 2008, Chapter 3
58-61-602, as last amended by Laws of Utah 2008, Chapter 3
59-2-924, as last amended by Laws of Utah 2008, Chapters 61, 118, 231, 236, 330, 360, and 382
61-1-2, as last amended by Laws of Utah 1993, Chapter 158
61-2-3, as last amended by Laws of Utah 2008, Chapter 169
63D-2-102, as last amended by Laws of Utah 2008, Chapter 3
63I-1-263, as last amended by Laws of Utah 2008, Chapters 148, 334, 339 and renumbered and amended by Laws of Utah 2008, Chapter 382

63L-3-202, as renumbered and amended by Laws of Utah 2008, Chapter 382

72-9-107, as enacted by Laws of Utah 2000, Chapter 150

76-3-201.1, as last amended by Laws of Utah 2003, Chapter 278

76-9-802, as enacted by Laws of Utah 2008, Chapter 15

78A-6-203, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-1205, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-1206, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-115, as renumbered and amended by Laws of Utah 2008, Chapter 3

REPEALS:

9-3-102, as enacted by Laws of Utah 1992, Chapter 241

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

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

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

(1) This title does not apply to:

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

(b) securities brokers and dealers registered pursuant to:

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

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

(c) depository or other institutions performing transaction account services, including third party transactions, in connection with:

(i) the purchase and redemption of investment company shares; or

(ii) access to a margin or cash securities account maintained by a person identified in Subsection (1)(b); or

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

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

(b) An investment company is not exempt from this title unless the investment

company is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., and is advised by an investment [~~advisor~~] adviser:

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

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

Section 2. Section **7-1-505** is amended to read:

7-1-505. Rules and regulations governing persons or institutions not regulated under other chapters of title.

With respect to any person or institution or class of institutions subject to the jurisdiction of the department under this [~~article~~] part and not regulated or supervised under any other chapter of this title, the commissioner shall issue appropriate rules and regulations consistent with the purposes and provisions of this title governing the regulation, supervision, and examination of those persons, institutions, or classes of institutions.

Section 3. Section **7-7-38** is amended to read:

7-7-38. Reports and examinations required -- Access to records.

Every association shall file such reports and be subject to such examinations as may be required by the commissioner under the provisions of Title 7, Chapter 1, [~~Article 3~~] Part 3, Powers and Duties of Commissioner of Financial Institutions. In lieu of any examination required under that article, the commissioner may accept any examination made by the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or their successor federal agencies, or an association's supervisory authority of another state. The commissioner, the supervisor, or their examiners or auditors shall have free access to all books and papers of an association, savings and loan holding company or any subsidiary thereof, the principal office of which is located in this state.

Section 4. Section **9-3-403** is amended to read:

9-3-403. Creation -- Members -- Chair -- Powers -- Quorum -- Per diem and expenses.

(1) There is created an independent state agency and a body politic and corporate known as the "Utah Science Center Authority."

(2) (a) The authority shall be composed of 13 members.

(b) The governor shall appoint:

(i) three members representing the informal science and arts community that could include members from the board of directors of the Hansen Planetarium, the Hogle Zoo, the Children's Museum of Utah, the Utah Museum of Natural History, and other related museums, centers, and agencies;

(ii) one member of the State Board of Education;

(iii) one member of the Division of Housing and Community Development of the Department of Community and Culture;

(iv) one member of the Board of [~~Travel~~] Tourism Development;

(v) one member of the State Board of Regents; and

(vi) three public members representing Utah industry, the diverse regions of the state, and the public at large.

(c) The county legislative body of Salt Lake County shall appoint one member to represent Salt Lake County.

(d) The mayor of Salt Lake City shall appoint one member to represent Salt Lake City Corporation.

(e) The State Science Advisor or the advisor's designee is also a member of the authority.

(f) In appointing the three public members, the governor shall ensure that there is representation from the science, technology, and business communities.

(3) All members shall be residents of Utah.

(4) Each member shall be appointed for four-year terms beginning July 1 of the year appointed.

(5) (a) Except as required by Subsection (5)(b), as terms of current authority members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(6) A member may be removed from office by the governor or for cause by an affirmative vote of nine members of the authority.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term.

(8) Each public member shall hold office for the term of his appointment and until the member's successor has been appointed and qualified.

(9) A public member is eligible for reappointment, but may not serve more than two full consecutive terms.

(10) The governor shall appoint the chair of the authority from among its members.

(11) The members shall elect from among their number a vice chair and other officers they may determine.

(12) The chair and vice chair shall be elected for two-year terms.

(13) The powers of the authority shall be vested in its members.

(14) Seven members constitute a quorum for transaction of authority business.

(15) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member’s official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

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

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

(d) (i) Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Higher education members may decline to receive per diem and expenses for their service.

Section 5. Section **17-27a-703** is amended to read:

17-27a-703. Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions.

(1) The applicant, a board or officer of the county, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

(2) (a) An applicant who has appealed a decision of the land use authority administering or interpreting the county's geologic hazard ordinance may request the county to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

(b) If an applicant makes a request under Subsection (2)(a), the county shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and county:

(i) one expert designated by the county;

(ii) one expert designated by the applicant; and

(iii) one expert chosen jointly by the county's designated expert and the applicant's designated expert.

(c) A member of the panel assembled by the county under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.

(d) The applicant shall pay:

(i) 1/2 of the cost of the panel; and

(ii) the [~~municipality's~~] county's published appeal fee.

Section 6. Section **17D-1-106** is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-109, 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, and 17B-1-116;

(b) Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, and 17B-1-313;

(c) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(d) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(e) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(f) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing [~~authority~~] body.

Section 7. Section **17D-1-301** is amended to read:

17D-1-301. Governance of a special service district -- Authority to create and delegate authority to an administrative control board -- Limitations on authority to delegate.

(1) Each special service district shall be governed by the legislative body of the county or municipality that creates the special service district, subject to any delegation under this section of a right, power, or authority to an administrative control board.

(2) At the time a special service district is created or at any time thereafter, the legislative body of a county or municipality that creates a special service district may, by resolution or ordinance:

(a) create an administrative control board for the special service district; and

(b) subject to Subsection (3), delegate to the administrative control board the exercise of any right, power, or authority that the legislative body possesses with respect to the governance of the special service district.

(3) A county or municipal legislative body may not delegate to an administrative control board of a special service district the power to:

(a) annex an area to an existing special service district or add a service within the area

of an existing special service district under Part 4, Annexing a New Area and Adding a New Service;

(b) designate, under Section 17D-1-107, the classes of special service district contracts that are subject to Title 11, Chapter 39, Building Improvements and Public Works Projects;

(c) levy a tax on the taxable property within the special service district;

(d) issue special service district bonds payable from taxes;

(e) call or hold an election for the authorization of a property tax or the issuance of bonds;

(f) levy an assessment;

(g) issue interim warrants or bonds payable from an assessment; or

(h) appoint a board of equalization under Section [~~11-42-404~~] 11-42-403.

(4) (a) A county or municipal legislative body that has delegated a right, power, or authority under this section to an administrative control board may at any time modify, limit, or revoke any right, power, or authority delegated to the administrative control board.

(b) A modification, limitation, or revocation under Subsection (4)(a) does not affect the validity of an action taken by an administrative control board before the modification, limitation, or revocation.

Section 8. Section **17D-2-506** is amended to read:

17D-2-506. Other entities not responsible for local building authority bonds or breach of mortgage and other obligations.

(1) Nothing in this part may be construed to require:

(a) the state or any political subdivision of the state to pay a bond issued under this part;

(b) the state or, except the creating local entity, any political subdivision of the state to pay any rent or lease payment due to a local building authority under the terms of a lease agreement; or

(c) the creating local entity to appropriate money to pay:

(i) principal of or interest on bonds issued by a local building authority; or

(ii) the lease payments under a lease agreement with the local building authority.

(2) A breach of a mortgage or a covenant or agreement in a mortgage may not impose a general obligation or liability upon or a charge against:

(a) the creating local entity; or

(b) the general credit or taxing power of the state or any political subdivision of the state.

Section 9. Section **19-2-103** is amended to read:

19-2-103. Members of board -- Appointment -- Terms -- Organization -- Per diem and expenses.

(1) The board comprises 11 members, one of whom shall be the executive director and ten of whom shall be appointed by the governor with the consent of the Senate.

(2) The members shall be knowledgeable of air pollution matters and shall be:

(a) a practicing physician and surgeon licensed in the state not connected with industry;

(b) a registered professional engineer who is not from industry;

(c) a representative from municipal government;

(d) a representative from county government;

(e) a representative from agriculture;

(f) a representative from the mining industry;

(g) a representative from manufacturing;

(h) a representative from the fuel industry; and

(i) two representatives of the public not representing or connected with industry, at least one of whom represents organized environmental interests.

(3) No more than five of the appointed members shall belong to the same political party.

(4) The majority of the members may not derive any significant portion of their income from persons subject to permits or orders under this chapter. Any potential conflict of interest of any member or the executive secretary, relevant to the interests of the board, shall be adequately disclosed.

(5) Members serving on the Air Conservation Committee created by Laws of Utah 1981, Chapter 126, as amended, shall serve as members of the board throughout the terms for which they were appointed.

(6) (a) Except as required by Subsection (6)(b), members shall be appointed for a term of four years.

(b) Notwithstanding the requirements of Subsection (6)(a), the governor shall, at the

time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(7) A member may serve more than one term.

(8) A member shall hold office until the expiration of [~~their terms~~] the member's term and until [~~their successors are~~] the member's successor is appointed, but not more than 90 days after the expiration of [~~their terms~~] the member's term.

(9) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(10) The board shall elect annually a chair and a vice chair from its members.

(11) (a) The board shall meet at least quarterly, and special meetings may be called by the chair upon his own initiative, upon the request of the executive secretary, or upon the request of three members of the board.

(b) Three days' notice shall be given to each member of the board prior to any meeting.

(12) Six members constitute a quorum at any meeting, and the action of a majority of members present is the action of the board.

(13) (a) (i) A member who is not a government employee shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member may decline to receive per diem and expenses for the member's service.

(b) (i) A state government officer and employee member who does not receive salary, per diem, or expenses from the agency the member represents for the member's service may receive per diem and expenses incurred in the performance of the member's official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government officer and employee member may decline to receive per diem and expenses for the member's service.

(c) (i) A local government member who does not receive salary, per diem, or expenses from the entity that the member represents for the member's service may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by

the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A local government member may decline to receive per diem and expenses for the member's service.

Section 10. Section **19-6-302** is amended to read:

19-6-302. Definitions.

As used in this part:

(1) (a) "Abatement action" means to take steps or contract with someone to take steps to eliminate or mitigate the direct or immediate threat to the public health or the environment caused by a hazardous materials release.

(b) "Abatement action" includes control of the source of the contamination.

(2) "Bona fide prospective purchaser" has the meaning given in 42 U.S.C. Sec. 9601(40) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter," and including "hazardous materials" where the term "hazardous substances" appears.

(3) "CERCLA" means 42 U.S.C. 9601 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act.

(4) "Cleanup action" means action taken according to the procedures established in this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous material from a facility.

(5) "Contiguous property owner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(q)(1) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter[~~"~~]."

(6) "Enforcement action" means the procedures contained in Section 19-6-306 to enforce orders, rules, and agreements authorized by this part.

(7) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous material or substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(b) "Facility" does not mean any consumer product in consumer use or any vessel.

(8) "Fund" means the Hazardous Substances Mitigation Fund created by Section 19-6-307.

(9) "Hazardous materials" means hazardous waste as defined in the Utah Hazardous Waste Management Regulations, PCBs, dioxin, asbestos, or a substance regulated under 42 U.S.C.[~~;~~] Section 6991[~~(2)~~](7).

(10) "Hazardous substances" means the definition of hazardous substances contained in CERCLA.

(11) "Hazardous substances priority list" means a list of facilities meeting the criteria established by Section 19-6-311 that may be addressed under the authority of this part.

(12) "Innocent landowner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(b)(3) of CERCLA.

(13) "National Contingency Plan" means the National Oil and Hazardous Substance Contingency plan established by CERCLA.

(14) "National Priority List" means the list established by CERCLA.

(15) "National priority list site" means a site in Utah that is listed on the National Priority List.

(16) "Proposed national priority list site" means a site in Utah that has been proposed by the Environmental Protection Agency for listing on the National Priority List.

(17) (a) "Release" means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of substances into the environment that is not authorized under state or federal law, rule, or regulation.

(b) "Release" includes abandoning or discarding barrels, containers, and other closed receptacles containing any hazardous material or substance, unless the discard or abandonment is authorized under state or federal law, rule, or regulation.

(18) "Remedial action" means action taken consistent with the substantive requirements of CERCLA according to the procedures established by this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous substance from a facility on the hazardous substances priority list.

(19) "Remedial action plan" means a plan for remedial action consistent with the substantive requirements of CERCLA and approved by the executive director.

(20) "Remedial investigation" means a remedial investigation and feasibility study as

defined in the National Contingency Plan established by CERCLA.

(21) (a) "Responsible party" means:

(i) the owner or operator of a facility;

(ii) any person who, at the time any hazardous substance or material was disposed of at the facility, owned or operated the facility;

(iii) any person who arranged for disposal or treatment, or arranged with a transporter for transport, for disposal, or treatment of hazardous materials or substances owned or possessed by the person, at any facility owned or operated by another person and containing the hazardous materials or substances; or

(iv) any person who accepts or accepted any hazardous materials or substances for transport to a facility selected by that person from which there is a release that causes the incurrence of response costs.

(b) For hazardous materials or substances that were delivered by a motor carrier to any facility, "responsible party" does not include the motor carrier, and the motor carrier may not be considered to have caused or contributed to any release at the facility that results from circumstances or conditions beyond its control.

(c) "Responsible party" under Subsections (21)(a)(i) and (ii) does not include:

(i) any person who does not participate in the management of a facility and who holds indicia of ownership:

(A) primarily to protect a security interest in a facility; or

(B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan;

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D) and 40 CFR 300.1105, National Contingency Plan; or

(iii) any person, including a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan who holds indicia of ownership and did not participate in the management of a facility prior to foreclosure in accordance with 42 U.S.C. Sec. 9601(20)(E)(ii) of CERCLA.

(d) The exemption created by Subsection (21)(c)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(e) The terms "security interest," "participate in management," "foreclose," and

"foreclosure" under this part are defined in accordance with 42 U.S.C. Sec. 9601(20)(E), (F), and (G) of CERCLA.

(22) "Scored site" means a facility in Utah that meets the requirements of scoring established by the National Contingency Plan for placement on the National Priority List.

Section 11. Section **19-6-310** is amended to read:

19-6-310. Apportionment of liability -- Liability agreements -- Legal remedies.

(1) The executive director may recover only the proportionate share of costs of any investigation and abatement performed under Section 19-6-309 and this section from each responsible party, as provided in this section.

(2) (a) In apportioning responsibility for the investigation and abatement, or liability for the costs of the investigation and abatement, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous materials contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of investigation and abatement costs.

(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(4) (a) Any party who incurs costs under Section 19-6-309 and this section in excess of his liability may seek contribution from any other party who is or may be liable under Section 19-6-309 and this section for the excess costs in the district court.

(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).

(5) (a) A party who has resolved his liability in an agreement under Section 19-6-309 and this section is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who

are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement.

(6) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Section 19-6-309 and this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Section 19-6-309 and this section may seek contribution from any person who is not party to an agreement under Section 19-6-309 and this section.

(7) (a) An agreement made under Section 19-6-309 and this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Section 19-6-309 and this section or any other applicable authority.

(8) (a) The executive director may not recover costs of any investigation performed under the authority of Subsection [~~19-6-304~~] 19-6-309(2)(b) if the investigation does not confirm that a release presenting a direct and immediate threat to public health has occurred.

(b) This subsection takes precedence over any conflicting provision of this section regarding cost recovery.

Section 12. Section **19-8-119** is amended to read:

19-8-119. Apportionment or contribution.

(1) Any party who incurs costs under a voluntary agreement entered into under this part in excess of his liability may seek contribution in an action in district court from any other party who is or may be liable under Subsection 19-6-302[~~(18)~~](21) or 19-6-402(26) for the excess costs after providing written notice to any other party that the party bringing the action has entered into a voluntary agreement and will incur costs.

(2) In resolving claims made under Subsection (1), the court shall allocate costs using the standards in Subsection 19-6-310(2).

Section 13. Section **32A-1-119.5** is amended to read:

32A-1-119.5. Timing of reporting violations.

(1) As used in this section:

(a) "Department compliance officer" means an individual who is:

(i) an auditor or inspector; and

(ii) employed by the department.

(b) "Nondepartment enforcement agency" means an agency that:

(i) (A) is a state agency other than the department; or

(B) is an agency of a county, city, or town; and

(ii) has a responsibility, as provided in another provision of this title, to enforce one or more provisions of this title.

(c) "Nondepartment enforcement officer" means an individual who is:

(i) a peace officer, examiner, or investigator; and

(ii) employed by an agency described in Subsection (1)(b).

(2) A disciplinary proceeding may not be initiated or maintained by the commission or department on the basis, in whole or in part, of a violation of this title unless a person listed in Subsections 32A-1-105[~~(15)~~](17)(a)(i) through (vi) against whom the violation is alleged is notified by the department of the violation in accordance with this section.

(3) (a) A nondepartment enforcement agency or nondepartment enforcement officer may not report a violation of this title to the department more than eight business days after the day on which a nondepartment enforcement officer or agency completes an investigation that finds a violation of this title.

(b) If the commission or department wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged in a report described in Subsection (3)(a), the department shall notify a person listed in Subsections 32A-1-105[~~(15)~~](17)(a)(i) through (vi) alleged by the report to have violated this title:

(i) by no later than eight business days of the day on which the department receives the report described in Subsection (3)(a); and

(ii) that the commission or department may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation.

(4) If the commission or department wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged by

report of a department compliance officer, the department shall notify a person listed in Subsections 32A-1-105[~~(15)~~](17)(a)(i) through (vi) alleged by the report to have violated this title:

(a) by no later than eight business days of the day on which the department compliance officer completes an investigation that finds a violation of this title; and

(b) that the commission or department may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation.

(5) The notice described in Subsection (2), (3)(b), or (4) is not required with respect to a person listed in Subsection 32A-1-105[~~(15)~~](17)(a)(vii).

(6) (a) A notice required by Subsection (2), (3)(b), or (4) may be done orally, if after the oral notification the department provides written notification.

(b) The written notification described in Subsection (6)(a) may be sent outside the time periods required by this section.

(7) The department shall maintain a record of a notification required by Subsection (2), (3)(b), or (4) that includes:

(a) the name of the person notified; and

(b) the date of the notification.

Section 14. Section **32A-5-107** is amended to read:

32A-5-107. Operational restrictions.

A club granted a private club license and the employees, management personnel, and members of the club shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the private club license or other disciplinary action taken against individual employees or management personnel.

(1) A private club shall have a governing body that:

(a) consists of three or more members of the private club; and

(b) holds regular meetings to:

(i) review membership applications; and

(ii) conduct other business as required by the bylaws or house rules of the private club.

(2) (a) A private club may admit an individual as a member only on written application signed by the applicant, subject to:

(i) the applicant paying an application fee as required by Subsection (4); and

(ii) investigation, vote, and approval of a quorum of the governing body.

(b) (i) An admission of a member shall be recorded in the official minutes of a regular meeting of the governing body.

(ii) An application, whether approved or disapproved, shall be filed as a part of the official records of the private club licensee.

(c) Notwithstanding Subsection (2)(a), a private club, in its discretion, may admit an applicant and immediately accord the applicant temporary privileges of a member until the governing body completes its investigation and votes on the application, subject to the following conditions:

(i) the applicant shall:

(A) submit a written application; and

(B) pay the application fee required by Subsection (4);

(ii) the governing body votes on the application at its next meeting, which shall take place no later than 31 days following the day on which the application is submitted; and

(iii) the applicant's temporary membership privileges terminate if the governing body disapproves the application.

(d) The spouse of a member of any class of private club has the rights and privileges of the member:

(i) to the extent permitted by the bylaws or house rules of the private club; and

(ii) except to the extent restricted by this title.

(e) The minor child of a member of a class A private club has the rights and privileges of the member:

(i) to the extent permitted by the bylaws or house rules of the private club; and

(ii) except to the extent restricted by this title.

(3) (a) A private club shall maintain a current and complete membership record showing:

(i) the date of application of a proposed member;

(ii) a member's address;

(iii) the date the governing body approved a member's admission;

(iv) the date initiation fees and dues are assessed and paid; and

(v) the serial number of the membership card issued to a member.

(b) A current record shall be kept indicating when a member is dropped or resigns.

(4) (a) A private club shall establish in the private club bylaws or house rules application fees and membership dues:

(i) as established by commission rules; and

(ii) that are collected from all members.

(b) An application fee:

(i) may not be less than $4;

(ii) shall be paid when the applicant applies for membership; and

(iii) at the discretion of the private club, may be credited toward membership dues if the governing body approves the applicant as a member.

(5) (a) A private club may, in its discretion, allow an individual to be admitted to or use the private club premises as a guest only under the following conditions:

(i) a guest must be previously authorized by one of the following who agrees to host the guest into the private club:

(A) an active member of the private club; or

(B) a holder of a current visitor card;

(ii) a guest must be known by the guest's host based on a preexisting bonafide business or personal relationship with the host before the guest's admittance to the private club;

(iii) a guest must be accompanied by the guest's host for the duration of the guest's visit to the private club;

(iv) a guest's host must remain on the private club premises for the duration of the guest's visit to the private club;

(v) a guest's host is responsible for the cost of services extended to the guest;

(vi) a guest has only those privileges derived from the guest's host for the duration of the guest's visit to the private club;

(vii) an employee of the private club, while on duty, may not act as a host for a guest;

(viii) an employee of the private club, while on duty, may not attempt to locate a member or current visitor card holder to serve as a host for a guest with whom the member or visitor card holder has no acquaintance based on a preexisting bonafide business or personal relationship prior to the guest's arrival at the private club; and

(ix) a private club or an employee of the private club may not enter into an agreement

or arrangement with a club member or holder of a current visitor card to indiscriminately host a member of the general public into the private club as a guest.

(b) Notwithstanding Subsection (5)(a), previous authorization is not required if:

(i) the private club licensee is a class B private club; and

(ii) the guest is a member of the same fraternal organization as the private club licensee.

(6) A private club may, in its discretion, issue a visitor card to allow an individual to enter and use the private club premises on a temporary basis under the following conditions:

(a) a visitor card shall be issued for a period not to exceed three weeks;

(b) a fee of not less than $4 shall be assessed for a visitor card that is issued;

(c) a visitor card may not be issued to a minor;

(d) a holder of a visitor card may not host more than seven guests at one time;

(e) a visitor card issued shall include:

(i) the visitor's full name and signature;

(ii) the date the visitor card is issued;

(iii) the date the visitor card expires;

(iv) the club's name; and

(v) the serial number of the visitor card; and

(f) (i) the private club shall maintain a current record of the issuance of a visitor card on the private club premises; and

(ii) the record described in Subsection (6)(f)(i) shall:

(A) be available for inspection by the department; and

(B) include:

(I) the name of the person to whom the visitor card is issued;

(II) the date the visitor card is issued;

(III) the date the visitor card expires; and

(IV) the serial number of the visitor card.

(7) A private club may not sell an alcoholic beverage to or allow a patron to be admitted to or use the private club premises other than:

(a) a member;

(b) a visitor who holds a valid visitor card issued under Subsection (6); or

(c) a guest of:

(i) a member; or

(ii) a holder of a valid visitor card.

(8) (a) A minor may not be:

(i) a member, officer, director, or trustee of a private club;

(ii) issued a visitor card;

(iii) admitted into, use, or be on the premises of a lounge or bar area, as defined by commission rule, of a private club except to the extent authorized under Subsection (8)(c)(ii);

(iv) admitted into, use, or be on the premises of a class D private club:

(A) that operates as a sexually oriented business as defined by local ordinance; or

(B) when a sexually oriented entertainer is performing on the premises; or

(v) admitted into, use, or be on the premises of a class D private club except to the extent authorized under Subsections (8)(b) through (g).

(b) Except as provided in Subsection (8)(a)(iv), at the discretion of a class D private club, a minor may be admitted into, use, or be on the premises of a class D private club under the following circumstances:

(i) during a period when no alcoholic beverages are sold, served, otherwise furnished, or consumed on the premises, but in no event later than 1 p.m.;

(ii) when accompanied at all times by a member or holder of a current visitor card who is the minor's parent, legal guardian, or spouse; and

(iii) the private club has a full kitchen and is licensed by the local jurisdiction as a food service provider.

(c) A class D private club may employ a minor on the premises of the private club if:

(i) the parent or legal guardian of the minor owns or operates the class D private club; or

(ii) the minor performs maintenance and cleaning services during the hours when the private club is not open for business.

(d) (i) Subject to Subsection (8)(d)(ii), a minor who is at least 18 years of age may be admitted into, use, or be on the premises of a dance or concert hall if:

(A) the dance or concert hall is located:

(I) on the premises of a class D private club; or

(II) on the property that immediately adjoins the premises of and is operated by a class D private club; and

(B) the commission issues the class D private club a permit to operate a minor dance or concert hall based on the criteria described in Subsection (8)(d)(iii).

(ii) If the dance or concert hall is located on the premises of a class D private club, a minor must be properly hosted in accordance with Subsection (5) by:

(A) a member; or

(B) a holder of a current visitor card.

(iii) The commission may issue a minor dance or concert hall permit if:

(A) the private club's lounge, bar, and alcoholic beverage consumption area is:

(I) not accessible to a minor;

(II) clearly defined; and

(III) separated from the dance or concert hall area by one or more walls, multiple floor levels, or other substantial physical barriers;

(B) a bar or dispensing area is not visible to a minor;

(C) consumption of an alcoholic beverage may not occur in:

(I) the dance or concert hall area; or

(II) an area of the private club accessible to a minor;

(D) the private club maintains sufficient security personnel to prevent the passing of beverages from the private club's lounge, bar, or an alcoholic beverage consumption area to:

(I) the dance or concert hall area; or

(II) an area of the private club accessible to a minor;

(E) there are one or more separate entrances, exits, and restroom facilities from the private club's lounge, bar, and alcoholic beverage consumption areas than for:

(I) the dance or concert hall area; or

(II) an area accessible to a minor; and

(F) the private club complies with any other restrictions imposed by the commission by rule.

(e) A minor under 18 years of age who is accompanied at all times by a parent or legal guardian who is a member or holder of a current visitor card may be admitted into, use, or be on the premises of a concert hall described in Subsection (8)(d)(i) if:

(i) the requirements of Subsection (8)(d) are met; and

(ii) signage, product, and dispensing equipment containing recognition of an alcoholic beverage is not visible to the minor.

(f) A minor under 18 years of age but who is 14 years of age or older who is not accompanied by a parent or legal guardian may be admitted into, use, or be on the premises of a concert hall described in Subsection (8)(d)(i) if:

(i) the requirements of Subsections (8)(d) and (8)(e)(ii) are met; and

(ii) there is no alcoholic beverage, sales, service, or consumption on the premises of the class D private club.

(g) The commission may suspend or revoke a minor dance or concert permit issued to a class D private club and suspend or revoke the license of the class D private club if:

(i) the private club fails to comply with the restrictions in Subsection (8)(d), (e), or (f);

(ii) the private club sells, serves, or otherwise furnishes an alcoholic beverage to a minor;

(iii) the private club licensee or a supervisory or managerial level employee of the private club licensee is convicted under Title 58, Chapter 37, Utah Controlled Substances Act, on the basis of an activity that occurs on:

(A) the licensed premises; or

(B) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club;

(iv) there are three or more convictions of patrons of the private club under Title 58, Chapter 37, Utah Controlled Substances Act, based on activities that occur on:

(A) the licensed premises; or

(B) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club;

(v) there is more than one conviction:

(A) of:

(I) the private club licensee;

(II) an employee of the private club licensee;

(III) an entertainer contracted by the private club licensee; or

(IV) a patron of the private club licensee; and

(B) made on the basis of a lewd act or lewd entertainment prohibited by this title that occurs on:

(I) the licensed premises; or

(II) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club; or

(vi) the commission finds acts or conduct contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title that occurs on:

(A) the licensed premises; or

(B) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club.

(h) Nothing in this Subsection (8) prohibits a class D private club from selling, serving, or otherwise furnishing an alcoholic beverage in a dance or concert area located on the private club premises on days and times when the private club does not allow a minor into those areas.

(i) Nothing in Subsections (8)(a) through (g) precludes a local authority from being more restrictive of a minor's admittance to, use of, or presence on the premises of a private club.

(9) (a) A private club shall maintain an expense ledger or record showing in detail all expenditures separated by payments for:

(i) malt or brewed beverages;

(ii) liquor;

(iii) food;

(iv) detailed payroll;

(v) entertainment;

(vi) rent;

(vii) utilities;

(viii) supplies; and

(ix) other expenditures.

(b) A private club shall keep a record required by this Subsection (9):

(i) in a form approved by the department; and

(ii) balanced each month.

(c) An expenditure shall be supported by:

(i) a delivery ticket;

(ii) an invoice;

(iii) a receipted bill;

(iv) a canceled check;

(v) a petty cash voucher; or

(vi) other sustaining datum or memorandum.

(d) An invoice or receipted bill for the current calendar or fiscal year documenting a purchase made by the private club shall be maintained.

(10) (a) A private club shall maintain a minute book that is posted currently by the private club.

(b) The minute book required by this Subsection (10) shall contain the minutes of a regular or special meeting of the governing body.

(c) A private club shall maintain a membership list.

(11) (a) A private club shall maintain a current copy of the private club's current bylaws and current house rules.

(b) A change in the bylaws or house rules:

(i) is not effective unless submitted to the department within ten days after adoption; and

(ii) becomes effective 15 days after received by the department unless rejected by the department before the expiration of the 15-day period.

(12) A private club shall maintain accounting and other records and documents as the department may require.

(13) A private club or person acting for the private club, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes an entry in a book of account or other document of the private club licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, the department, or an official or employee of the commission or department, is subject to:

(a) the suspension or revocation of the private club's license; and

(b) possible criminal prosecution under Chapter 12, Criminal Offenses.

(14) (a) A private club licensee shall maintain and keep a record required by this section and a book, record, receipt, or disbursement maintained or used by the licensee, as the

department requires, for a minimum period of three years.

(b) A record, book, receipt, or disbursement is subject to inspection by an authorized representative of the commission and the department.

(c) A private club licensee shall allow the department, through an auditor or examiner of the department, to audit the records of the private club licensee at times the department considers advisable.

(d) The department shall audit the records of the private club licensee at least once annually.

(15) A private club licensee shall own or lease premises suitable for the private club's activities.

(16) (a) A private club licensee may not maintain facilities in a manner that barricades or conceals the private club licensee's operation.

(b) A member of the commission, authorized department personnel, or a peace officer shall, upon presentation of credentials, be admitted immediately to the private club and permitted without hindrance or delay to inspect completely the entire private club premises and the books and records of the private club licensee, at any time during which the private club licensee is open for the transaction of business to its members.

(17) Public advertising related to a private club licensee by the following shall clearly identify a private club as being "a private club for members":

(a) the private club licensee;

(b) an employee or agent of the private club licensee; or

(c) a person under a contract or agreement with the private club licensee.

(18) A private club licensee must have food available at all times when an alcoholic beverage is sold, served, or consumed on the premises.

(19) (a) Liquor may not be purchased by a private club licensee except from a state store or package agency.

(b) Liquor purchased from a state store or package agency may be transported by the private club licensee from the place of purchase to the licensed premises.

(c) Payment for liquor shall be made in accordance with rules established by the commission.

(20) A private club licensee may sell or provide a primary spirituous liquor only in a

quantity not to exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor;

(ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

(iii) the private club licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

(b) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert;

(c) a private club patron may have no more than 2.5 ounces of spirituous liquor at a time before the private club patron[.]; and

(d) a private club patron may have no more than two spirituous liquor drinks at a time before the private club patron, except that a private club patron may not have two spirituous liquor drinks before the private club patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(21) (a) (i) Wine may be sold and served by the glass or an individual portion not to exceed five ounces per glass or individual portion.

(ii) An individual portion may be served to a patron in more than one glass as long as the total amount of wine does not exceed five ounces.

(iii) An individual portion of wine is considered to be one alcoholic beverage under Subsection (25)(c).

(b) (i) Wine may be sold and served in a container not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.

(ii) Wine may be sold and served in a container not exceeding 750 milliliters at a price

fixed by the commission to a table of less than four persons.

(c) A wine service may be performed and a service charge assessed by the private club licensee as authorized by commission rule for wine purchased at the private club.

(22) (a) Heavy beer may be served in an original container not exceeding one liter at a price fixed by the commission.

(b) A flavored malt beverage may be served in an original container not exceeding one liter at a price fixed by the commission.

(c) A service charge may be assessed by the private club licensee for heavy beer or a flavored malt beverage purchased at the private club.

(23) (a) (i) Subject to Subsection (23)(a)(ii), a private club licensee may sell beer for on-premise consumption:

(A) in an open container; and

(B) on draft.

(ii) Beer sold pursuant to Subsection (23)(a)(i) shall be in a size of container that does not exceed two liters, except that beer may not be sold to an individual patron in a size of container that exceeds one liter.

(b) (i) A private club licensee that sells beer pursuant to Subsection (23)(a):

(A) may do so without obtaining a separate on-premise beer retailer license from the commission; and

(B) shall comply with all appropriate operational restrictions under Chapter 10, Beer Retailer Licenses, that apply to an on-premise beer retailer except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(ii) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer Licenses, required by Subsection (23)(b)(i) may result in a suspension or revocation of the private club's:

(A) state liquor license; and

(B) alcoholic beverage license issued by the local authority.

(24) An alcoholic beverage may not be stored, served, or sold in a place other than as designated in the private club licensee's application, unless the private club licensee first applies for and receives approval from the department for a change of location within the private club.

(25) (a) A patron may only make an alcoholic beverage purchase in the private club from and be served by a person employed, designated, and trained by the private club licensee to sell, dispense, and serve an alcoholic beverage.

(b) Notwithstanding Subsection (25)(a), a patron who purchases bottled wine from an employee of the private club licensee or carries bottled wine onto the premises of the private club pursuant to Subsection (31) may thereafter serve wine from the bottle to the patron or others at the patron's table.

(c) A private club patron may have no more than two alcoholic beverages of any kind at a time before the private club patron, subject to the limitation of Subsection (20)(d).

(26) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales and service are authorized by law.

(27) (a) Liquor may not be sold, offered for sale, served, or otherwise furnished at a private club on any day after 1 a.m. or before 10 a.m.

(b) The hours of beer sales and service are those specified in Chapter 10, Beer Retailer Licenses, for on-premise beer licenses.

(c) (i) Notwithstanding Subsections (27)(a) and (b), a private club shall remain open for one hour after the private club ceases the sale and service of an alcoholic beverage during which time a patron of the private club may finish consuming:

(A) a single drink containing spirituous liquor;

(B) a single serving of wine not exceeding five ounces;

(C) a single serving of heavy beer;

(D) a single serving of beer not exceeding 26 ounces; or

(E) a single serving of a flavored malt beverage.

(ii) A private club is not required to remain open:

(A) after all patrons have vacated the premises; or

(B) during an emergency.

(d) Between the hours of 2 a.m. and 10 a.m. on any day a private club licensee may not allow a patron to remain on the premises of the private club to consume an alcoholic beverage on the premises.

(28) An alcoholic beverage may not be sold, served, or otherwise furnished to a:

(a) minor;

(b) person actually, apparently, or obviously intoxicated;

(c) known habitual drunkard; or

(d) known interdicted person.

(29) (a) (i) Liquor may be sold only at a price fixed by the commission.

(ii) Liquor may not be sold at a discount price on any date or at any time.

(b) An alcoholic beverage may not be sold at less than the cost of the alcoholic beverage to the private club licensee.

(c) An alcoholic beverage may not be sold at a special or reduced price that encourages over consumption or intoxication.

(d) The price of a single serving of a primary spirituous liquor shall be the same whether served as a single drink or in conjunction with another alcoholic beverage.

(e) An alcoholic beverage may not be sold at a special or reduced price for only certain hours of the private club's business day such as a "happy hour."

(f) More than one alcoholic beverage may not be sold or served for the price of a single alcoholic beverage.

(g) An indefinite or unlimited number of alcoholic beverages may not be sold or served during a set period for a fixed price.

(h) A private club licensee may not engage in a promotion involving or offering free alcoholic beverages to patrons of the private club.

(30) An alcoholic beverage may not be purchased for a patron of the private club licensee by:

(a) the private club licensee; or

(b) an employee or agent of the private club licensee.

(31) (a) A person may not bring onto the premises of a private club licensee an alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, bottled wine onto the premises of a private club licensee for on-premise consumption.

(b) Except bottled wine under Subsection (31)(a), a private club licensee or an officer, manager, employee, or agent of a private club licensee may not allow:

(i) a person to bring onto the private club premises an alcoholic beverage for consumption on the private club premises; or

(ii) consumption of an alcoholic beverage described in Subsection (31)(b)(i) on the premises of the private club.

(c) If bottled wine is carried in by a patron, the patron shall deliver the wine to a server or other representative of the private club licensee upon entering the private club.

(d) A wine service may be performed and a service charge assessed by the private club licensee as authorized by commission rule for wine carried in by a patron.

(32) (a) Except as provided in Subsection (32)(b), a private club licensee or an employee of the private club licensee may not permit a patron of the private club to carry from the private club premises an open container that:

(i) is used primarily for drinking purposes; and

(ii) contains an alcoholic beverage.

(b) A patron may remove the unconsumed contents of a bottle of wine if before removal, the bottle is recorked or recapped.

(33) (a) A minor may not be employed by a class A, B, or C private club licensee to sell, dispense, or handle an alcoholic beverage.

(b) Notwithstanding Subsection (33)(a), a minor who is at least 16 years of age may be employed by a class A or C private club licensee to enter the sale at a cash register or other sales recording device.

(c) Except to the extent authorized in Subsection (8)(c), a minor may not be employed by or be on the premises of a class D private club.

(d) A minor may not be employed to work in a lounge or bar area of a class A, B, or C private club licensee.

(34) An employee of a private club licensee, while on duty, may not:

(a) consume an alcoholic beverage; or

(b) be intoxicated.

(35) A private club licensee shall have available on the premises for a patron to review at the time that the [~~customer~~] patron requests it, a written alcoholic beverage price list or a menu containing the price of an alcoholic beverage sold or served by the private club licensee including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

(36) A private club licensee shall display in a prominent place in the private club:

(a) the private club license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(37) A private club licensee may not on the premises of the private club:

(a) engage in or permit any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;

(b) have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling; or

(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(38) (a) A private club licensee may not close or cease operation for a period longer than 240 hours, unless:

(i) the private club licensee notifies the department in writing at least seven days before the day on which the private club licensee closes or ceases operation; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (38)(a), in the case of emergency closure, the private club licensee shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon:

(A) written request of the private club; and

(B) a showing of good cause.

(iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) The notice required by Subsection (38)(a) shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the private club licensee will reopen or resume operation.

(e) Failure of the private club licensee to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic forfeiture of:

(i) the private club license; and

(ii) the unused portion of the private club license fee for the remainder of the license year effective immediately.

(f) Failure of the private club licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:

(i) the private club license; and

(ii) the unused portion of the private club license fee for the remainder of the license year.

(39) A private club license may not be transferred from one location to another person, without prior written approval of the commission.

(40) (a) A private club licensee, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the private club license to another person, whether for monetary gain or not.

(b) A private club license has no monetary value for the purpose of any type of disposition.

(41) A private club licensee or an employee of the private club licensee may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

(a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or

(b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.

Section 15. Section **32A-8-101** is amended to read:

32A-8-101. Commission's power to grant licenses -- Limitations.

(1) The commission may issue an alcoholic beverage manufacturing license to a manufacturer whose business [~~in this state~~] is located in this state for the manufacture, storage,

and sale of alcoholic beverages for each type of license provided by this chapter.

(2) The type of manufacturing licenses issued under this chapter are known as a:

(a) winery license;

(b) distillery license; and

(c) brewery license.

(3) (a) A person may not manufacture an alcoholic beverage unless an alcoholic beverage manufacturing license is issued by the commission.

(b) A separate license is required for each place of manufacture, storage, and sale of an alcoholic beverage.

(c) Violation of this Subsection (3) is a class B misdemeanor.

(4) (a) A brewer located outside the state is not required to be licensed under this chapter.

(b) A brewer described in Subsection (4)(a) must obtain a certificate of approval from the department before selling or delivering:

(i) beer to a licensed beer wholesaler in this state;

(ii) on or after October 1, 2008, a flavored malt beverage to the department or a military installation; or

(iii) if a small brewer, beer to a licensed beer wholesaler or retailer in this state.

(c) A brewer seeking a certificate of approval shall file a written application with the department, in a form prescribed by the department. The application shall be accompanied by:

(i) a nonrefundable $50 application fee;

(ii) an initial certificate of approval fee of $250 that is refundable if a certificate is not granted;

(iii) evidence of authority from the United States Bureau of Alcohol, Tobacco, and Firearms to brew beer, heavy beer, or a flavored malt beverage; and

(iv) any other information or documents the department may require.

(d) (i) An application shall be signed and verified by oath or affirmation by:

(A) a partner if the brewer is a partnership; or

(B) an executive officer, manager, or person specifically authorized by a corporation or limited liability company to sign the application.

(ii) The brewer filing an application shall attach to the application written evidence of

the authority of the person described in Subsection (4)(d)(i) to sign the application.

(e) (i) All certificates of approval expire on December 31 of each year.

(ii) A brewer desiring to renew its certificate shall submit a renewal fee of $200, and a completed renewal application to the department no later than November 30 of the year the certificate expires.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the certificate effective on the date the existing certificate expires.

(iv) A renewal application shall be in a form prescribed by the department.

(5) The commission may prescribe by policy, directive, or rule, consistent with this title, the general operational requirements of licensees relating to:

(a) physical facilities;

(b) conditions of sale, storage, or manufacture of alcoholic beverages;

(c) storage and sales quantity limitations; and

(d) other matters considered appropriate by the commission.

Section 16. Section **36-11-103** is amended to read:

36-11-103. Licensing requirements.

(1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the lieutenant governor by completing the form required by this section.

(b) The lieutenant governor shall issue licenses to qualified lobbyists.

(c) The lieutenant governor shall prepare a Lobbyist License Application Form that includes:

(i) a place for the lobbyist's name and business address;

(ii) a place for the name and business address of each principal for whom the lobbyist works or is hired as an independent contractor;

(iii) a place for the name and address of the person who paid or will pay the lobbyist's registration fee, if the fee is not paid by the lobbyist;

(iv) a place for the lobbyist to disclose any elected or appointed position that the lobbyist holds in state or local government, if any;

(v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist will be reimbursed; and

(vi) a certification to be signed by the lobbyist that certifies that the information

provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and belief.

(2) Each lobbyist who obtains a license under this section shall update the licensure information when the lobbyist accepts employment for lobbying by a new client.

(3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a lobbying license to an applicant who:

(i) files an application with the lieutenant governor that contains the information required by this section; and

(ii) pays a $25 filing fee.

(b) A license entitles a person to serve as a lobbyist on behalf of one or more principals and expires on December 31 of each even-numbered year.

(4) (a) The lieutenant governor may disapprove an application for a lobbying license:

(i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107, 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

(ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304 within one year before the date of the lobbying license application;

(iii) for the term of any suspension imposed under Section 36-11-401; or

(iv) if, within one year before the date of the lobbying license application, the applicant has been found to have willingly and knowingly:

(A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403; or

(B) filed a document required by this chapter that the lobbyist knew contained materially false information or omitted material information.

(b) An applicant may appeal the disapproval in accordance with the procedures established by the lieutenant governor under this chapter and Title 63G, Chapter 4, Administrative Procedures Act.

(5) The lieutenant governor shall deposit license fees in the General Fund.

(6) A principal need not obtain a license under this section, but if the principal makes expenditures to benefit a public official without using a lobbyist as an agent to confer those benefits, the principal shall disclose those expenditures as required by [~~Sections~~] Section 36-11-201.

(7) Government officers need not obtain a license under this section, but shall disclose any expenditures made to benefit public officials as required by [~~Sections~~] Section 36-11-201.

(8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the reports by Section 36-11-201.

Section 17. Section **38-8-1** is amended to read:

38-8-1. Definitions.

As used in this chapter:

(1) "Default" means the failure to perform in a timely manner any obligation or duty set forth in this chapter or the rental agreement.

(2) "Last known address" means that address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

(3) "Occupant" means a person, or his sublessee, successor, or [~~assign~~] assignee, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized by him to manage the facility or to receive rent from an occupant under a rental agreement.

(5) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, merchandise, and household items.

(6) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy at a self-service storage facility and which contains a notice stating that all articles stored under the terms of the agreement will be sold or otherwise disposed of if no payment has been received for a continuous 30-day period. The agreement shall contain a provision directing the occupant to disclose any lienholders with an interest in property that is or will be stored in the self-service storage facility.

(7) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the facility for the purpose of storing and removing personal property. No occupant may use a

self-service storage facility for residential purposes. The owner of a self-service storage facility is not a warehouse as used in Section 70A-7a-102. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to the provisions of the Uniform Commercial Code, and the provisions of this chapter do not apply.

Section 18. Section **51-9-405** is amended to read:

51-9-405. Substance Abuse Prevention Account established -- Funding -- Uses.

(1) There is created a restricted account within the General Fund known as the Substance Abuse Prevention Account.

(2) (a) The Division of Finance shall allocate to the Substance Abuse Prevention Account from the collected surcharge established in Section 51-9-401:

(i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the Legislature; and

(ii) 2.5% for the State Office of Education, but not to exceed the amount appropriated by the Legislature.

(b) The juvenile court shall use the allocation to pay for [~~community~~] compensatory service programs required by Subsection 78A-6-117(2)(m).

(c) The State Office of Education shall use the allocation in public school programs for:

(i) substance abuse prevention and education;

(ii) substance abuse prevention training for teachers and administrators; and

(iii) district and school programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

Section 19. Section **51-9-504** is amended to read:

51-9-504. Utah Navajo royalties and related issues.

(1) (a) Notwithstanding Title 63, Chapter 88, Navajo Trust Fund, repealed July 1, 2008, and except as provided in Subsection (7), the following are subject to this Subsection (1):

(i) the repealed board of trustees;

(ii) the repealed trust administrator;

(iii) an employee or agent of the repealed Navajo Trust Fund; or

(iv) the repealed Dineh Committee.

(b) The repealed board of trustees may not:

(i) beginning on March 17, 2008, take an action that imposes or may impose a liability or obligation described in Subsection (1)(d) that is:

(A) anticipated to be completed on or after January 1, 2010; or

(B) equal to or greater than $100,000;

(ii) on or after May 5, 2008, take an action that imposes or may impose a liability or obligation described in Subsection (1)(d).

(c) On or after March 17, 2008 a person described in Subsections (1)(a)(ii) through (iv) may not take an action that imposes or may impose a liability or obligation described in Subsection (1)(d).

(d) Subsection (1)(b) applies to a liability or obligation on:

(i) the repealed Navajo Trust Fund;

(ii) the Navajo Revitalization Fund created under Title 9, Chapter 11, Navajo Revitalization Fund Act;

(iii) the state; or

(iv) any of the following related to an entity described in this Subsection (1)(d):

(A) a department;

(B) a division;

(C) an office;

(D) a committee;

(E) a board;

(F) an officer;

(G) an employee; or

(H) a similar agency or individual.

(2) The Division of Finance shall:

(a) establish a fund by no later than July 1, 2008:

(i) to hold:

(A) the monies in the repealed Navajo Trust Fund as of June 30, 2008;

(B) Utah Navajo royalties received by the state on or after July 1, 2008;

(C) revenues from investments made by the state treasurer of the monies in the fund established under this Subsection (2)(a); and

(D) monies owed to the repealed Navajo Trust Fund, including monies received by the repealed trust administrator or repealed Dineh Committee from an agreement executed by:

(I) the repealed board of trustees;

(II) the repealed trust administrator; or

(III) the repealed Dineh Committee; and

(ii) from which monies may not be transferred or expended, except:

(A) as provided in Subsection (7); or

(B) as authorized by congressional action to designate a new recipient of the Utah Navajo royalties; and

(b) by no later than July 1, 2008, transfer to the fund created under Subsection (2)(a) in a manner consistent with this section the related assets and liabilities of the repealed Navajo Trust Fund, including the transfer of monies in the repealed Navajo Trust Fund.

(3) The state treasurer shall invest monies in the fund created in Subsection (2)(a) in accordance with Title 51, Chapter 7, State Money Management Act.

(4) (a) By no later than May 5, 2008, the repealed board of trustees shall:

(i) adopt a list of all related assets and liabilities of the repealed trust fund that are not satisfied by May 5, 2008, which may include assets and liabilities that are contingent in nature or amount;

(ii) adopt a list of all individuals who at the time of adoption meet the requirements of Subsection (7)(b); and

(iii) provide a copy of the lists described in [~~Subsection~~] Subsections (4)(a)(i) and (ii) to:

(A) the state auditor; and

(B) the Department of Administrative Services.

(b) The state auditor, in addition to completing its Fiscal Year 2007-2008 audit of the repealed Navajo Trust Fund, shall:

(i) verify the list of the related assets and liabilities of the repealed Navajo Trust Fund adopted by the repealed board of trustees under Subsection (4)(a) by no later than June 30, 2008; and

(ii) provide a written copy of the verification to the governor and the Legislature by no later than July 30, 2008.

(5) The governor shall ensure that the reporting requirements under P.L. 90-306, 82 Stat. 121, are met.

(6) The Department of Administrative Services, in cooperation with the Department of Human Resources, may assist employees of the repealed Navajo Trust Fund as of June 30, 2008, in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(7) With the fund created under Subsection (2) and the fixed assets of the repealed Navajo Trust Fund, the Department of Administrative Services shall:

(a) fulfill the liabilities and obligations of the repealed Navajo Trust Fund as of June 30, 2008;

(b) provide monies to an individual enrolled member of the Navajo Nation who:

(i) resides in San Juan County;

(ii) as of June 30, 2010, has received monies under this Subsection (7)(b) for postsecondary education;

(iii) beginning the later of June 30 or the day on which the individual first receives monies under this Subsection (7)(b), is enrolled in postsecondary education for the equivalent of at least two semesters each year; and

(iv) meets the eligibility requirements adopted by the repealed board of trustees as of March 17, 2008;

(c) through the Division of Facilities Construction and Management, reasonably maintain the fixed assets of the repealed Navajo Trust Fund, to the extent that a lessee of a fixed asset is not required by a lease to maintain a fixed asset;

(d) through the Division of Facilities Construction and Management, take those steps necessary to secure the purchase:

(i) of the following that is owned by the repealed Navajo Trust Fund as of May 5, 2008:

(A) the government service building; or

(B) another fixed asset of the repealed Navajo Trust Fund, if the sale of the fixed asset is consistent with the obligations of the state with regard to the Utah Navajo royalties; and

(ii) (A) in an arms length manner; and

(B) so that fair market compensation is paid to the repealed Navajo Trust Fund; and

(e) charge the fund established under Subsection (2)(a) for the expenses that are

necessary and reasonable to comply with the requirements of this Subsection (7).

(8) Unless expressly prohibited by this part, the state may take any action with regard to the assets held by the state under this part that is consistent with the obligations of the state related to the Utah Navajo royalties.

Section 20. Section **53-3-102** is amended to read:

53-3-102. Definitions.

As used in this chapter:

(1) "Cancellation" means the termination by the division of a license issued through error or fraud or for which consent under Section 53-3-211 has been withdrawn.

(2) "Class D license" means the class of license issued to drive motor vehicles not defined as commercial motor vehicles or motorcycles under this chapter.

[~~(3) "Class M license" means the class of license issued to drive a motorcycle as defined under this chapter.~~]

[~~(4)~~] (3) "Commercial driver license" or "CDL" means a license issued substantially in accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle.

[~~(5)~~] (4) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

(i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal regulation;

(ii) is designed to transport 16 or more passengers, including the driver; or

(iii) is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

(b) The following vehicles are not considered a commercial motor vehicle for purposes of Part 4, Uniform Commercial Driver License Act:

(i) equipment owned and operated by the United States Department of Defense when driven by any active duty military personnel and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians and civilians who are required to wear military uniforms and are subject to the code of military justice;

(ii) vehicles controlled and driven by a farmer to transport agricultural products, farm machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation as a motor carrier for hire;

(iii) firefighting and emergency vehicles; and

(iv) recreational vehicles that are not used in commerce and are driven solely as family or personal conveyances for recreational purposes.

[~~(6)~~] (5) "Conviction" means any of the following:

(a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

(b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(c) a plea of guilty or nolo contendere accepted by the court;

(d) the payment of a fine or court costs; or

(e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

[~~(7)~~] (6) "Denial" or "denied" means the withdrawal of a driving privilege by the division to which the provisions of Title 41, Chapter 12a, Part 4, Proof of Owner's or Operator's Security, do not apply.

[~~(8)~~] (7) "Director" means the division director appointed under Section 53-3-103.

[~~(9)~~] (8) "Disqualification" means either:

(a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state of a person's privileges to drive a commercial motor vehicle;

(b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386, that a person is no longer qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391; or

(c) the loss of qualification that automatically follows conviction of an offense listed in 49 C.F.R. Part 383.51.

[~~(10)~~] (9) "Division" means the Driver License Division of the department created in Section 53-3-103.

[~~(11)~~] (10) "Drive" means:

(a) to operate or be in physical control of a motor vehicle upon a highway; and

(b) in Subsections 53-3-414(1) through (3), Subsection 53-3-414(5), and Sections 53-3-417 and 53-3-418, the operation or physical control of a motor vehicle at any place within the state.

[~~(12)~~] (11) (a) "Driver" means any person who drives, or is in actual physical control of a motor vehicle in any location open to the general public for purposes of vehicular traffic.

(b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person who is required to hold a CDL under Part 4 or federal law.

[~~(13)~~] (12) "Driving privilege card" means the evidence of the privilege granted and issued under this chapter to drive a motor vehicle to a person whose privilege was obtained without using a Social Security number.

[~~(14)~~] (13) "Extension" means a renewal completed in a manner specified by the division.

[~~(15)~~] (14) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

[~~(16)~~] (15) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public, as a matter of right, for traffic.

[~~(17)~~] (16) "License" means the privilege to drive a motor vehicle.

[~~(18)~~] (17) "License certificate" means the evidence of the privilege issued under this chapter to drive a motor vehicle.

[~~(19)~~] (18) "Motorboat" has the same meaning as provided under Section 73-18-2.

[~~(20)~~] (19) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the rider and designed to travel with not more than three wheels in contact with the ground.

[~~(21)~~] (20) "Office of Recovery Services" means the Office of Recovery Services, created in Section 62A-11-102.

[~~(22)~~] (21) (a) "Owner" means a person other than a lienholder having an interest in the property or title to a vehicle.

(b) "Owner" includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

[~~(23)~~] (22) "Renewal" means to validate a license certificate so that it expires at a later

date.

[~~(24)~~] (23) "Reportable violation" means an offense required to be reported to the division as determined by the division and includes those offenses against which points are assessed under Section 53-3-221.

[~~(25)~~] (24) (a) "Resident" means an individual who:

(i) has established a domicile in this state, as defined in Section 41-1a-202, or regardless of domicile, remains in this state for an aggregate period of six months or more during any calendar year;

(ii) engages in a trade, profession, or occupation in this state, or who accepts employment in other than seasonal work in this state, and who does not commute into the state;

(iii) declares himself to be a resident of this state by obtaining a valid Utah driver license certificate or motor vehicle registration; or

(iv) declares himself a resident of this state to obtain privileges not ordinarily extended to nonresidents, including going to school, or placing children in school without paying nonresident tuition or fees.

(b) "Resident" does not include any of the following:

(i) a member of the military, temporarily stationed in this state;

(ii) an out-of-state student, as classified by an institution of higher education, regardless of whether the student engages in any type of employment in this state;

(iii) a person domiciled in another state or country, who is temporarily assigned in this state, assigned by or representing an employer, religious or private organization, or a governmental entity; or

(iv) an immediate family member who resides with or a household member of a person listed in Subsections [~~(25)~~] (24)(b)(i) through (iii).

[~~(26)~~] (25) "Revocation" means the termination by action of the division of a licensee's privilege to drive a motor vehicle.

[~~(27)~~] (26) (a) "School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students to and from home and school, or to and from school sponsored events.

(b) "School bus" does not include a bus used as a common carrier as defined in Section 59-12-102.

[~~(28)~~] (27) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to drive a motor vehicle.

[~~(29)~~] (28) "Taxicab" means any class D motor vehicle transporting any number of passengers for hire and that is subject to state or federal regulation as a taxi.

Section 21. Section **53-3-204** is amended to read:

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

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

(i) is younger than 16 years of age;

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

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

(iv) is not a resident of the state, unless the person is issued a temporary CDL under Subsection 53-3-407(2)(b); or

(v) if the person is 17 years of age or younger, has not held a learner permit issued under Section 53-3-210.5 for six months.

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

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

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

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

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

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

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

(d) who is required by this chapter to take an examination unless the person successfully passes the examination; or

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

(i) Section 78A-6-606 by an order of the juvenile court; or

(ii) Section 53-3-231.

(3) (a) Except as provided in Subsection (3)(c), the division may not grant a motorcycle

endorsement to a person who:

(i) has not been granted an original or provisional class D license, a CDL, or an out-of-state equivalent to an original or provisional class D license or a CDL; and

(ii) if the person is under 19 years of age, has not held a motorcycle learner permit for two months unless Subsection (3)(b) applies.

(b) The division may waive the two month motorcycle learner permit holding period requirement under Subsection (3)(a)(ii) if the person proves to the satisfaction of the division that the person has completed a motorcycle rider education program that meets the requirements under Section 53-3-903.

(c) The division may grant a motorcycle endorsement to a person under 19 years of age who has not held a motorcycle learner permit for two months if the person was issued a motorcycle endorsement [~~or a class M license~~] prior to July 1, 2008.

(4) The division may grant a class D license to a person whose commercial license is disqualified under Part 4, Uniform Commercial Driver License Act, if the person is not otherwise sanctioned under this chapter.

Section 22. Section **53-3-205** is amended to read:

53-3-205. Application for license or endorsement -- Fee required -- Tests -- Expiration dates of licenses and endorsements -- Information required -- Previous licenses surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required -- License agreement.

(1) An application for any original license, provisional license, or endorsement shall be:

(a) made upon a form furnished by the division; and

(b) accompanied by a nonrefundable fee set under Section 53-3-105.

(2) An application and fee for an original provisional class D license or an original class D license entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and the skills tests for a class D license within six months of the date of the application;

(b) a learner permit if needed pending completion of the application and testing process; and

(c) an original class D license and license certificate after all tests are passed.

(3) An application and fee for a motorcycle or taxicab endorsement entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and skills tests within six months of the date of the application;

(b) a motorcycle learner permit after the motorcycle knowledge test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(4) An application and fees for a commercial class A, B, or C license entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application;

(b) a commercial driver instruction permit if needed after the knowledge test is passed; and

(c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(5) An application and fee for a CDL endorsement entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application; and

(b) a CDL endorsement when all tests are passed.

(6) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test within the number of attempts provided in Subsection (4) or (5), each test may be taken two additional times within the six months for the fee provided in Section 53-3-105.

(7) (a) Except as provided under Subsections (7)(f), (g), and (h), an original license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) Except as provided under Subsections (7)(f), (g), (h), and (i), a renewal or an extension to a license expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) Except as provided under Subsections (7)(f), (g), and (i), a duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was granted.

(e) A license and any endorsement to the license held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless:

(i) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(ii) the licensee updates the information or photograph on the license certificate.

(f) An original license or a renewal to an original license obtained using proof under Subsection (8)(a)(i)(E)(III) expires on the date of the expiration of the applicant's foreign visa, permit, or other document granting legal presence in the United States or on the date provided under this Subsection (7), whichever is sooner.

(g) (i) An original license or a renewal or a duplicate to an original license expires on the next birth date of the applicant or licensee beginning on July 1, 2005 if:

(A) the license was obtained without using a Social Security number as required under Subsection (8); and

(B) the license certificate or driving privilege card is not clearly distinguished as required under Subsection 53-3-207(6).

(ii) A driving privilege card issued or renewed under Section 53-3-207 expires on the birth date of the applicant in the first year following the year that the driving privilege card was issued or renewed.

(iii) The expiration dates provided under Subsections (7)(g)(i) and (ii) do not apply to an original license or driving privilege card or to the renewal of an original license or driving privilege card with an expiration date provided under Subsection (7)(f).

(h) An original license or a renewal to an original license expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is required to register as a sex offender under Section 77-27-21.5.

[~~(i) An original class M license or a renewal, duplicate, or extension to an original class M license expires on June 30, 2008.~~]

(8) (a) In addition to the information required by Title 63G, Chapter 4, Administrative Procedures Act, for requests for agency action, each applicant shall:

(i) provide the applicant's:

(A) full legal name;

(B) birth date;

(C) gender;

(D) between July 1, 2002 and July 1, 2007, race in accordance with the categories established by the United States Census Bureau;

(E) (I) Social Security number;

(II) temporary identification number (ITIN) issued by the Internal Revenue Service for a person who does not qualify for a Social Security number; or

(III) (Aa) proof that the applicant is a citizen of a country other than the United States;

(Bb) proof that the applicant does not qualify for a Social Security number; and

(Cc) proof of legal presence in the United States, as authorized under federal law; and

(F) Utah residence address as documented by a form acceptable under rules made by the division under Section 53-3-104, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b);

(ii) provide a description of the applicant;

(iii) state whether the applicant has previously been licensed to drive a motor vehicle and, if so, when and by what state or country;

(iv) state whether the applicant has ever had any license suspended, cancelled, revoked, disqualified, or denied in the last ten years, or whether the applicant has ever had any license application refused, and if so, the date of and reason for the suspension, cancellation, revocation, disqualification, denial, or refusal;

(v) state whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, in compliance with Subsection (15);

(vi) state whether the applicant is required to register as a sex offender under Section 77-27-21.5;

(vii) state whether the applicant is a military veteran and does or does not authorize sharing the information with the state Department of Veterans' Affairs;

(viii) provide all other information the division requires; and

(ix) sign the application which signature may include an electronic signature as defined in Section 46-4-102.

(b) Each applicant shall have a Utah residence address, unless the application is for a

temporary CDL issued under Subsection 53-3-407(2)(b).

(c) The division shall maintain on its computerized records an applicant's:

(i) (A) Social Security number;

(B) temporary identification number (ITIN); or

(C) other number assigned by the division if Subsection (8)(a)(i)(E)(III) applies; and

(ii) indication whether the applicant is required to register as a sex offender under Section 77-27-21.5.

(d) An applicant may not be denied a license for refusing to provide race information required under Subsection (8)(a)(i)(D).

(9) The division shall require proof of every applicant's name, birthdate, and birthplace by at least one of the following means:

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof, including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

(10) When an applicant receives a license in another class, all previous license certificates shall be surrendered and canceled. However, a disqualified commercial license may not be canceled unless it expires before the new license certificate is issued.

(11) (a) When an application is received from a person previously licensed in another state to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

(b) When received, the driver's record becomes part of the driver's record in this state with the same effect as though entered originally on the driver's record in this state.

(12) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section 53-3-105.

(13) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 53-3-105.

(14) A person who applies for an original license or renewal of a license agrees that the

person's license is subject to any suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(15) (a) The indication of intent under Subsection (8)(a)(v) shall be authenticated by the licensee in accordance with division rule.

(b) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all persons who under Subsection (8)(a)(v) indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

(A) obtain additional information for an anatomical gift registry; and

(B) inform licensees of anatomical gift options, procedures, and benefits.

(16) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may release to the Department of Veterans' Affairs the names and addresses of all persons who indicate their status as a veteran under Subsection (8)(a)(vii).

(17) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection (8)(a)(v) or (vii), for direct or indirect:

(a) loss;

(b) detriment; or

(c) injury.

(18) A person who knowingly fails to provide the information required under Subsection (8)(a)(vi) is guilty of a class A misdemeanor.

Section 23. Section **53-10-208** is amended to read:

53-10-208. Definition -- Offenses included on statewide warrant system -- Transportation fee to be included -- Statewide warrant system responsibility -- Quality control -- Training -- Technical support -- Transaction costs.

(1) "Statewide warrant system" means the portion of the state court computer system that is accessible by modem from the state mainframe computer and contains:

(a) records of criminal warrant information; and

(b) after notice and hearing, records of protective orders issued pursuant to:

[~~(ii)~~] (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act[~~,~~]; or

[~~(i)~~] (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[~~; or~~].

(2) (a) (i) The division shall include on the statewide warrant system all warrants issued for felony offenses and class A, B, and C misdemeanor offenses in the state.

(ii) For each offense the division shall indicate whether the magistrate ordered under Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

(b) Infractions shall not be included on the statewide warrant system, including any subsequent failure to appear warrants issued on an infraction.

(3) The division is the agency responsible for the statewide warrant system and shall:

(a) ensure quality control of all warrants of arrest or commitment and protective orders contained in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering the information on the system;

(b) upon the expiration of the protective orders and in the manner prescribed by the division, purge information regarding protective orders described in Subsection 53-10-208.1(4) within 30 days of the time after expiration;

(c) establish system procedures and provide training to all criminal justice agencies having access to information contained on the state warrant system;

(d) provide technical support, program development, and systems maintenance for the operation of the system; and

(e) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to information contained on the state warrant system.

(4) (a) Any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

(b) This Subsection (4) supersedes any conflicting provision in Subsection (3)(e).

Section 24. Section **53-10-208.1** is amended to read:

53-10-208.1. Magistrates and court clerks to supply information.

Every magistrate or clerk of a court responsible for court records in this state shall, within 30 days of the disposition and on forms and in the manner provided by the division, furnish the division with information pertaining to:

(1) all dispositions of criminal matters, including:

(a) guilty pleas;

(b) convictions;

(c) dismissals;

(d) acquittals;

(e) pleas held in abeyance;

(f) judgments of not guilty by reason of insanity for a violation of:

(i) a felony offense;

(ii) Title 76, Chapter 5, Offenses Against the Person; or

(iii) Title 76, Chapter 10, Part 5, Weapons;

(g) judgments of guilty and mentally ill;

(h) finding of mental incompetence to stand trial for a violation of:

(i) a felony offense;

(ii) Title 76, Chapter 5, Offenses Against the Person; or

(iii) Title 76, Chapter 10, Part 5, Weapons; or

(i) probations granted; and

(2) orders of civil commitment under the terms of Section 62A-15-631;

(3) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303, within one day of the action and in a manner provided by the division; and

(4) protective orders issued after notice and hearing, pursuant to:

[~~(b)~~] (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act[~~.~~]; or

[~~(a)~~] (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[~~, or~~].

Section 25. Section **53B-8a-105** is amended to read:

53B-8a-105. Additional powers of board as to the Utah Educational Savings Plan Trust.

The board has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the Utah Educational Savings Plan Trust, including the power to:

(1) engage:

(a) one or more investment advisors, registered under the Investment [~~Advisors~~] Advisers Act of 1940, with at least 5,000 advisory clients and at least $1,000,000,000 under management, to provide investment advice to the board with respect to the assets held in each account;

(b) an administrator to perform recordkeeping functions on behalf of the Utah Educational Savings Plan Trust; and

(c) a custodian for the safekeeping of the assets of the Utah Educational Savings Plan Trust;

(2) carry out studies and projections in order to advise account owners regarding present and estimated future higher education costs and levels of financial participation in the Utah Educational Savings Plan Trust required in order to enable account owners to achieve their educational funding objective;

(3) contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the Utah Educational Savings Plan Trust;

(4) participate in any other way in any federal, state, or local governmental program for the benefit of the Utah Educational Savings Plan Trust;

(5) promulgate, impose, and collect administrative fees and charges in connection with transactions of the Utah Educational Savings Plan Trust, and provide for reasonable service charges, including penalties for cancellations and late payments;

(6) procure insurance against any loss in connection with the property, assets, or activities of the Utah Educational Savings Plan Trust;

(7) administer the funds of the Utah Educational Savings Plan Trust;

(8) solicit and accept for the benefit of the endowment fund gifts, grants, and other moneys, including general fund moneys from the state and grants from any federal or other governmental agency;

(9) procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and

(10) make rules and regulations for the administration of the Utah Educational Savings Plan Trust.

Section 26. Section **58-60-114** is amended to read:

58-60-114. Confidentiality -- Exemptions.

(1) A mental health therapist under this chapter may not disclose any confidential

communication with a client or patient without the express consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) the authorized agent of a client or patient.

(2) A mental health therapist under this chapter is not subject to Subsection (1) if:

(a) he is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

[~~(ii)~~] (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of Disabled Adult;

[~~(i)~~] (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section 26-6-6;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 27. Section **58-60-509** is amended to read:

58-60-509. Confidentiality -- Exemptions.

(1) A licensee under this part may not disclose any confidential communication with a client or patient without the express consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) the authorized agent of a client or patient.

(2) A licensee under this part is not subject to Subsection (1) if:

(a) he is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

[~~(ii)~~] (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of Vulnerable Adults;

[~~(i)~~] (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect

Reporting Requirements;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; [~~and~~] or

(iv) reporting of a communicable disease as required under Section 26-6-6;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 28. Section **58-61-602** is amended to read:

58-61-602. Confidentiality -- Exemptions.

(1) A psychologist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) the authorized agent of a client or patient.

(2) A psychologist under this chapter is not subject to Subsection (1) if:

(a) he is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

[~~(ii)~~] (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of Disabled Adult;

[~~(i)~~] (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section 26-6-6;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 29. Section **59-2-924** is amended to read:

59-2-924. Report of valuation of property to county auditor and commission --

Transmittal by auditor to governing bodies -- Certified tax rate -- Calculation of certified tax rate -- Rulemaking authority -- Adoption of tentative budget.

(1) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(a) a statement containing the aggregate valuation of all taxable real property assessed by a county assessor in accordance with Part 3, County Assessment, for each taxing entity; and

(b) a statement containing the taxable value of all personal property assessed by a county assessor in accordance with Part 3, County Assessment, from the prior year end values.

(2) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(a) the statements described in Subsections (1)(a) and (b);

(b) an estimate of the revenue from personal property;

(c) the certified tax rate; and

(d) all forms necessary to submit a tax levy request.

(3) (a) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were budgeted by that taxing entity for the prior year.

(b) For purposes of this Subsection (3):

(i) "Ad valorem property tax revenues" do not include:

(A) collections from redemptions;

(B) interest;

(C) penalties; and

(D) revenue received by a taxing entity from personal property that is:

(I) assessed by a county assessor in accordance with Part 3, County Assessment; and

(II) semiconductor manufacturing equipment.

(ii) "Aggregate taxable value of all property taxed" means:

(A) the aggregate taxable value of all real property assessed by a county assessor in accordance with Part 3, County Assessment, for the current year;

(B) the aggregate taxable year end value of all personal property assessed by a county assessor in accordance with Part 3, County Assessment, for the prior year; and

(C) the aggregate taxable value of all real and personal property assessed by the

commission in accordance with Part 2, Assessment of Property, for the current year.

(c) (i) Except as otherwise provided in this section, the certified tax rate shall be calculated by dividing the ad valorem property tax revenues budgeted for the prior year by the taxing entity by the amount calculated under Subsection (3)(c)(ii).

(ii) For purposes of Subsection (3)(c)(i), the legislative body of a taxing entity shall calculate an amount as follows:

(A) calculate for the taxing entity the difference between:

(I) the aggregate taxable value of all property taxed; and

(II) any redevelopment adjustments for the current calendar year;

(B) after making the calculation required by Subsection (3)(c)(ii)(A), calculate an amount determined by increasing or decreasing the amount calculated under Subsection (3)(c)(ii)(A) by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year;

(C) after making the calculation required by Subsection (3)(c)(ii)(B), calculate the product of:

(I) the amount calculated under Subsection (3)(c)(ii)(B); and

(II) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(D) after making the calculation required by Subsection (3)(c)(ii)(C), calculate an amount determined by subtracting from the amount calculated under Subsection (3)(c)(ii)(C) any new growth as defined in this section:

(I) within the taxing entity; and

(II) for the following calendar year:

(Aa) for new growth from real property assessed by a county assessor in accordance with Part 3, County Assessment and all property assessed by the commission in accordance with Section 59-2-201, the current calendar year; and

(Bb) for new growth from personal property assessed by a county assessor in accordance with Part 3, County Assessment, the prior calendar year.

(iii) For purposes of Subsection (3)(c)(ii)(A), the aggregate taxable value of all property taxed:

(A) except as provided in Subsection (3)(c)(iii)(B) or (3)(c)(ii)(C), is as defined in Subsection (3)(b)(ii);

(B) does not include the total taxable value of personal property contained on the tax rolls of the taxing entity that is:

(I) assessed by a county assessor in accordance with Part 3, County Assessment; and

(II) semiconductor manufacturing equipment; and

(C) for personal property assessed by a county assessor in accordance with Part 3, County Assessment, the taxable value of personal property is the year end value of the personal property contained on the prior year's tax rolls of the entity.

(iv) For purposes of Subsection (3)(c)(ii)(B), for calendar years beginning on or after January 1, 2007, the value of taxable property does not include the value of personal property that is:

(A) within the taxing entity assessed by a county assessor in accordance with Part 3, County Assessment; and

(B) semiconductor manufacturing equipment.

(v) For purposes of Subsection (3)(c)(ii)(C)(II), for calendar years beginning on or after January 1, 2007, the percentage of property taxes collected does not include property taxes collected from personal property that is:

(A) within the taxing entity assessed by a county assessor in accordance with Part 3, County Assessment; and

(B) semiconductor manufacturing equipment.

(vi) For purposes of Subsection (3)(c)(ii)(B), for calendar years beginning on or after January 1, 2009, the value of taxable property does not include the value of personal property that is within the taxing entity assessed by a county assessor in accordance with Part 3, County Assessment.

(vii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may prescribe rules for calculating redevelopment adjustments for a calendar year.

(d) (i) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules determining the calculation of ad valorem property tax revenues budgeted by a taxing entity.

(ii) For purposes of Subsection (3)(d)(i), ad valorem property tax revenues budgeted by a taxing entity shall be calculated in the same manner as budgeted property tax revenues are calculated for purposes of Section 59-2-913.

(e) The certified tax rates for the taxing entities described in this Subsection (3)(e) shall be calculated as follows:

(i) except as provided in Subsection (3)(e)(ii), for new taxing entities the certified tax rate is zero;

(ii) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(A) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(B) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-1 and Subsection 17-36-3(22); and

(iii) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(A) school leeways provided for under Sections 11-2-7, 53A-16-110, [~~53A-17a-125,~~] 53A-17a-127, 53A-17a-133, 53A-17a-134, 53A-17a-143, and 53A-17a-145[~~, and 53A-21-103~~]; and

(B) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-1604.

(f) (i) A judgment levy imposed under Section 59-2-1328 or 59-2-1330 shall be established at that rate which is sufficient to generate only the revenue required to satisfy one or more eligible judgments, as defined in Section 59-2-102.

(ii) The ad valorem property tax revenue generated by the judgment levy shall not be considered in establishing the taxing entity's aggregate certified tax rate.

(g) The ad valorem property tax revenue generated by the capital outlay levy described in Section 53A-16-107 within a taxing entity in a county of the first class:

(i) may not be considered in establishing the school district's aggregate certified tax rate; and

(ii) shall be included by the commission in establishing a certified tax rate for that

capital outlay levy determined in accordance with the calculation described in Subsection 59-2-913(3).

(4) (a) For the purpose of calculating the certified tax rate, the county auditor shall use:

(i) the taxable value of real property assessed by a county assessor contained on the assessment roll;

(ii) the taxable value of real and personal property assessed by the commission; and

(iii) the taxable year end value of personal property assessed by a county assessor contained on the prior year's assessment roll.

(b) For purposes of Subsection (4)(a)(i), the taxable value of real property on the assessment roll does not include new growth as defined in Subsection (4)(c).

(c) "New growth" means:

(i) the difference between the increase in taxable value of the following property of the taxing entity from the previous calendar year to the current year:

(A) real property assessed by a county assessor in accordance with Part 3, County Assessment; and

(B) property assessed by the commission under Section 59-2-201; plus

(ii) the difference between the increase in taxable year end value of personal property of the taxing entity from the year prior to the previous calendar year to the previous calendar year; minus

(iii) the amount of an increase in taxable value described in Subsection (4)(e).

(d) For purposes of Subsection (4)(c)(ii), the taxable value of personal property of the taxing entity does not include the taxable value of personal property that is:

(i) contained on the tax rolls of the taxing entity if that property is assessed by a county assessor in accordance with Part 3, County Assessment; and

(ii) semiconductor manufacturing equipment.

(e) Subsection (4)(c)(iii) applies to the following increases in taxable value:

(i) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments; or

(ii) the amount of an increase in the taxable value of property assessed by the commission under Section 59-2-201 resulting from a change in the method of apportioning the taxable value prescribed by:

(A) the Legislature;

(B) a court;

(C) the commission in an administrative rule; or

(D) the commission in an administrative order.

(f) For purposes of Subsection (4)(a)(ii), the taxable year end value of personal property on the prior year's assessment roll does not include:

(i) new growth as defined in Subsection (4)(c); or

(ii) the total taxable year end value of personal property contained on the prior year's tax rolls of the taxing entity that is:

(A) assessed by a county assessor in accordance with Part 3, County Assessment; and

(B) semiconductor manufacturing equipment.

(5) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:

(i) its intent to exceed the certified tax rate; and

(ii) the amount by which it proposes to exceed the certified tax rate.

(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919(3).

Section 30. Section **61-1-2** is amended to read:

61-1-2. Investment adviser -- Unlawful acts.

(1) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

(a) employ any device, scheme, or artifice to defraud the other person;

(b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(c) divide or otherwise split any consideration with any person not licensed under this chapter as an investment [~~advisor~~] adviser or investment adviser representative.

(2) (a) Except as may be permitted by rule of the division, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(i) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(ii) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(iii) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(b) Subsection 61-1-2(2)(a)(i) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

(c) "Assignment," as used in Subsection 61-1-2(2)(a)(ii), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

(d) If the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(3) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(a) the division by rule prohibits custody; or

(b) in the absence of a rule, the investment adviser fails to notify the division that he has or may have custody.

(4) The division may by rule adopt exemptions from Subsections 61-1-2(2)(a)(i), (ii), and (iii) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Section 31. Section **61-2-3** is amended to read:

61-2-3. Exempt persons and transactions.

(1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not required for:

(i) a person who as owner or lessor performs the acts described in Subsection 61-2-2 (12) with reference to property owned or leased by that person;

(ii) a regular salaried employee of the owner or lessor of real estate who, with reference to nonresidential real estate owned or leased by the employer, performs the acts enumerated in Subsections 61-2-2(12)(a) and (b);

(iii) a regular salaried employee of the owner of real estate who performs property management services with reference to real estate owned by the employer, except that the employee may only manage property for one employer;

(iv) a person who performs property management services for the apartments at which that person resides in exchange for free or reduced rent on that person's apartment;

(v) a regular salaried employee of a condominium homeowners' association who manages real property subject to the declaration of condominium that established the homeowners' association, except that the employee may only manage property for one condominium homeowners' association; and

(vi) a regular salaried employee of a licensed property management company who performs support services, as prescribed by rule, for the property management company.

(b) Subsection (1)(a) does not exempt from licensing:

(i) an employee engaged in the sale of properties regulated under:

(A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

(B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

(ii) an employee engaged in the sale of cooperative interests regulated under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or

(iii) a person whose interest as an owner or lessor is obtained by that person or transferred to that person for the purpose of evading the application of this chapter, and not for any other legitimate business reason.

(2) A license under this chapter is not required for:

(a) an isolated transaction by a person holding a duly executed power of attorney from the owner;

(b) services rendered by an attorney in performing the attorney's duties as an attorney;

(c) a receiver, trustee in bankruptcy, administrator, executor, or a person acting under order of any court;

(d) a trustee or employee of a trustee under a deed of trust or a will;

(e) a public utility, officer of a public utility, or regular salaried employee of a public

utility, unless performance of any of the acts set out in Subsection 61-2-2(12) is in connection with the sale, purchase, lease, or other disposition of real estate or investment in real estate unrelated to the principal business activity of that public utility;

(f) a regular salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of Transportation in connection with one or more of the following:

(i) the acquisition of real property pursuant to Section 72-5-103;

(ii) the disposal of real property pursuant to Section 72-5-111;

(iii) services that constitute property management; or

(iv) the leasing of real property;

(g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:

(i) in accordance with:

(A) if a regular salaried employee of a city or town:

(I) Title 10, Utah Municipal Code; or

(II) Title 11, Cities, Counties, and Local Taxing Units; and

(B) if a regular salaried employee of a county:

(I) Title 11, Cities, Counties, and Local Taxing Units; and

(II) Title 17, Counties; and

(ii) in connection with one or more of the following:

(A) the acquisition of real property, including by eminent domain;

(B) the disposal of real property;

(C) services that constitute property management; or

(D) the leasing of real property.

(3) A license under this chapter is not required for a person registered to act as a broker-dealer, agent, or investment [~~advisor~~] adviser under the Utah and federal securities laws in the sale or the offer for sale of real estate if:

(a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and

(ii) the security is registered for sale:

(A) pursuant to the Securities Act of 1933; or

(B) by Title 61, Chapter 1, Utah Uniform Securities Act; or

(b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and

(ii) the selling agent and the purchaser are not residents of this state.

Section 32. Section **63D-2-102** is amended to read:

63D-2-102. Definitions.

As used in this chapter:

(1) (a) "Collect" means the gathering of personally identifiable information:

(i) from a user of a governmental website; or

(ii) about a user of the governmental website.

(b) "Collect" includes use of any identifying code linked to a user of a governmental website.

(2) "Court website" means a website on the Internet that is operated by or on behalf of any court created in Title 78A, Chapter 1, Judiciary.

(3) "Governmental entity" means:

(a) an executive branch agency as defined in Section [~~63D-1a-102~~] 63F-1-102;

(b) the legislative branch;

(c) the judicial branch;

(d) the State Board of Education;

(e) the Board of Regents;

(f) an institution of higher education; and

(g) a political subdivision of the state:

(i) as defined in Section 17B-1-102; and

(ii) including a school district.

(4) (a) "Governmental website" means a website on the Internet that is operated by or on behalf of a governmental entity.

(b) "Governmental website" includes a court website.

(5) "Governmental website operator" means a governmental entity or person acting on behalf of the governmental entity that:

(a) operates a governmental website; and

(b) collects or maintains personally identifiable information from or about a user of that website.

(6) "Personally identifiable information" means information that identifies:

(a) a user by:

(i) name;

(ii) account number;

(iii) physical address;

(iv) email address;

(v) telephone number;

(vi) Social Security number;

(vii) credit card information; or

(viii) bank account information;

(b) a user as having requested or obtained specific materials or services from a governmental website;

(c) Internet sites visited by a user; or

(d) any of the contents of a user's data-storage device.

(7) "User" means a person who accesses a governmental website.

Section 33. Section **63I-1-263** is amended to read:

63I-1-263. Repeal dates, Titles 63 to 63M.

[~~(10)~~] (1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to any public school district which chooses to participate, is repealed July 1, 2016.

[~~(11)~~] (2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

[~~(12)~~] (3) Section 63C-8-106, Rural residency training program, is repealed July 1, 2015.

[~~(3)~~] (4) The Resource Development Coordinating Committee, created in Section 63J-4-501, is repealed July 1, 2015.

[~~(4)~~] (5) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

[~~(5)~~] (6) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is repealed July 1, 2010.

(b) Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in

recycling market development zones, are repealed for taxable years beginning on or after January 1, 2011.

(c) Notwithstanding Subsection [~~(5)~~] (6)(b), a person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after July 1, 2010; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after July 1, 2010.

(d) Notwithstanding Subsections [~~(5)~~] (6)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before June 30, 2010; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before June 30, 2010.

[~~(1)~~] (7) Title 63M, Chapter 7, Part 4, Sentencing Commission, is repealed January 1, 2012.

[~~(2)~~] (8) The Crime Victim Reparations Board, created in Section 63M-7-504, is repealed July 1, 2017.

[~~(6)~~] (9) Title 63M, Chapter 8, Utah Commission for Women and Families Act, is repealed July 1, 2011.

[~~(7)~~] (10) Title 63M, Chapter 9, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2016.

[~~(8) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2008.~~]

[~~(9)~~] (11) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2009.

Section 34. Section **63L-3-202** is amended to read:

63L-3-202. Agency actions.

(1) Using the guidelines prepared under Section 63L-3-201, each state agency shall:

(a) determine whether an action has constitutional taking implications; and

(b) prepare an assessment of constitutional taking implications that includes an analysis

of the following:

(i) the likelihood that the action may result in a constitutional taking, including a description of how the taking affects the use or value of private property;

(ii) alternatives to the proposed action that may:

(A) fulfill the government's legal obligations of the state agency;

(B) reduce the impact on the private property owner; and

(C) reduce the risk of a constitutional taking; and

(iii) an estimate of financial cost to the state for compensation and the source of payment within the agency's budget if a constitutional taking is determined.

(2) In addition to the guidelines prepared under Section 63L-3-201, each state agency shall adhere, to the extent permitted by law, to the following criteria if implementing or enforcing actions that have constitutional taking implications:

(a) If an agency requires a person to obtain a permit for a specific use of private property, any conditions imposed on issuing the permit shall directly relate to the purpose for which the permit is issued and shall substantially advance that purpose.

(b) Any restriction imposed on the use of private property shall be proportionate to the extent the use contributes to the overall problem that the restriction is to redress.

(c) If an action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before taking an action restricting private property use for the protection of public health or safety, the state agency, in internal deliberative documents, shall:

(i) clearly identify, with as much specificity as possible, the public health or safety risk created by the private property use;

(ii) establish that the action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(iii) establish, to the extent possible, that the restrictions imposed on the private property are proportionate to the extent the use contributes to the overall risk; and

(iv) estimate, to the extent possible, the potential cost to the government if a court determines that the action constitutes a constitutional taking.

(3) If there is an immediate threat to health and safety that constitutes an emergency

and requires an immediate response, the analysis required by [~~Paragraph~~] Subsection (2)(b) [~~of this section~~] may be made when the response is completed.

(4) Before the state agency implements an action that has constitutional taking implications, the state agency shall submit a copy of the assessment of constitutional taking implications to the governor and the Legislative Management Committee.

Section 35. Section **72-9-107** is amended to read:

72-9-107. Medical exemptions for farm vehicle operators.

Except as provided in Section 53-3-206, an operator of a farm vehicle or combination of farm vehicles that are under 26,001 pounds gross vehicle weight rating and not operated as a commercial motor vehicle, in accordance with Subsection 53-3-102[~~(5)~~](4)(b)(ii), is exempt from additional requirements for physical qualifications, medical examinations, and medical certification.

Section 36. Section **76-3-201.1** is amended to read:

76-3-201.1. Collection of criminal judgment accounts receivable.

(1) As used in this section:

(a) "Criminal judgment accounts receivable" means any amount due the state arising from a criminal judgment for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, reimbursement of a reward, and damages.

(2) (a) A criminal judgment account receivable ordered by the court as a result of prosecution for a criminal offense may be collected by any means authorized by law for the collection of a civil judgment.

(b) (i) The court may permit a defendant to pay a criminal judgment account receivable in installments.

(ii) In the district court, if the criminal judgment account receivable is paid in installments, the total amount due shall include all fines, surcharges, postjudgment interest, and fees.

(c) Upon default in the payment of a criminal judgment account receivable or upon default in the payment of any installment of that receivable, the criminal judgment account

receivable may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by any means authorized by law for the collection of a civil judgment.

(3) When a defendant defaults in the payment of a criminal judgment account receivable or any installment of that receivable, the court, on motion of the prosecution, victim, or upon its own motion may:

(a) order the defendant to appear and show cause why the default should not be treated as contempt of court; or

(b) issue a warrant of arrest.

(4) (a) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure to make a good faith effort to make the payment, the court may find that the default constitutes contempt.

(b) Upon a finding of contempt, the court may order the defendant committed until the criminal judgment account receivable, or a specified part of it, is paid.

(5) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order for any of the following or any combination of the following:

(a) require the defendant to pay the criminal judgment account receivable or a specified part of it by a date certain;

(b) restructure the payment schedule;

(c) restructure the installment amount;

(d) except as provided in Section 77-18-8, execute the original sentence of imprisonment;

(e) start the period of probation anew;

(f) except as limited by Subsection (6), convert the criminal judgment account receivable or any part of it to [~~community~~] compensatory service;

(g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal judgment account receivable; or

(h) in the district court, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(6) In issuing an order under this section, the court may not modify the amount of the judgment of complete restitution.

(7) Whether or not a default constitutes contempt, the court may add to the amount owed the fees established under Subsection 63A-8-201(4)(g) and postjudgment interest.

(8) (a) (i) If a criminal judgment account receivable is past due in a case supervised by the Department of Corrections, the judge shall determine whether or not to record the unpaid balance of the account receivable as a civil judgment.

(ii) If the judge records the unpaid balance of the account receivable as a civil judgment, the judge shall transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(b) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is past due, the district court may, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the account receivable to the Office of State Debt Collection.

(c) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

(9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the obligation from those assets.

(b) Failure to pay the obligation may be held to be contempt under Subsection (3).

(10) The prosecuting attorney may collect restitution in behalf of a victim.

Section 37. Section **76-9-802** is amended to read:

76-9-802. Definitions.

As used in this part:

(1) "Criminal street gang" means an organization, association in fact, or group of three or more persons, whether operated formally or informally:

(a) that is currently in operation;

(b) that has as one of its primary activities the commission of one or more predicate

gang crimes;

(c) that has, as a group, an identifying name or identifying sign or symbol, or both; and

(d) whose members, acting individually or in concert with other members, engage in or have engaged in a pattern of criminal gang activity.

(2) "Intimidate" means the use of force, duress, violence, coercion, menace, or threat of harm for the purpose of causing an individual to act or refrain from acting.

(3) "Minor" means a person younger than 18 years of age.

(4) "Pattern of criminal gang activity" means:

(a) committing, attempting to commit, conspiring to commit, or soliciting the commission of two or more predicate gang crimes within five years;

(b) the predicate gang crimes are:

(i) committed by two or more persons; or

(ii) committed by an individual at the direction of, or in association with a criminal street gang; and

(c) the criminal activity was committed with the specific intent to promote, further, or assist in any criminal conduct by members of the criminal street gang.

(5) (a) "Predicate gang crime" means any of the following offenses:

[~~(xxiii)~~] (i) Title 41, Chapter 1a, Motor Vehicle Act:

(A) Section 41-1a-1313, regarding possession of a motor vehicle without an identification number;

(B) Section 41-1a-1315, regarding false evidence of title and registration;

(C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;

(D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an identification number; [~~and~~] or

(E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number[~~.~~];

[~~(i)~~] (ii) any criminal violation of the following provisions:

(A) Title 58, Chapter 37, Utah Controlled Substances Act;

(B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

[~~(ii)~~] (iii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;

[~~(iii)~~] (iv) Title 76, Chapter 5, Part 2, Criminal Homicide;

[~~(iv)~~] (v) Sections 76-5-301 through 76-5-304, which address kidnapping and related offenses;

[~~(v)~~] (vi) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

[~~(vi)~~] (vii) Title 76, Chapter 6, Part 1, Property Destruction;

[~~(vii)~~] (viii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;

[~~(viii)~~] (ix) Title 76, Chapter 6, Part 3, Robbery;

[~~(ix)~~] (x) any felony offense under Title 76, Chapter 6, Part 4, Theft, except Sections 76-6-404.5, 76-6-405, 76-6-407, 76-6-408, 76-6-409, 76-6-409.1, 76-6-409.3, 76-6-409.6, 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;

[~~(x)~~] (xi) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

[~~(xi)~~] (xii) Title 76, Chapter 6, Part 11, Identity Fraud Act;

[~~(xii)~~] (xiii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8 303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

[~~(xiii)~~] (xiv) Section 76-8-508, which includes tampering with a witness;

[~~(xiv)~~] (xv) Section 76-8-508.3, which includes retaliation against a witness or victim;

[~~(xv)~~] (xvi) Section 76-8-509, which includes extortion or bribery to dismiss a criminal proceeding;

[~~(xvi)~~] (xvii) Title 76, Chapter 10, Part 3, which addresses explosives;

[~~(xvii)~~] (xviii) Title 76, Chapter 10, Part 5, Weapons;

[~~(xviii)~~] (xix) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

[~~(xix)~~] (xx) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

[~~(xx)~~] (xxi) Section 76-10-1801, which addresses communications fraud;

[~~(xxi)~~] (xxii) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; or

[~~(xxii)~~] (xxiii) Section 76-10-2002, which addresses burglary of a research facility[~~;~~].

(b) "Predicate gang crime" also includes:

(i) any state or federal criminal offense that by its nature involves a substantial risk that

physical force may be used against another in the course of committing the offense; and

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of any offense in Subsection (4)(a) if committed in this state.

Section 38. Section **78A-6-203** is amended to read:

78A-6-203. Board of Juvenile Court Judges -- Composition -- Purpose.

(1) (a) The Judicial Council shall by rule establish a Board of Juvenile Court Judges.

(b) The board shall establish general policies for the operation of the juvenile courts and uniform rules and forms governing practice, consistent with the provisions of this chapter, the rules of the Judicial Council, and rules of the Supreme Court.

(c) The board may receive and expend any funds that may become available from the federal government or private sources to carry out any of the purposes of this chapter.

(i) The board may meet any federal requirements that are conditions precedent to receiving the funds.

(ii) The board may cooperate with the federal government in a program for training personnel employed or preparing for employment by the juvenile court and may receive and expend funds from federal or state sources or from private donations for these purposes.

(iii) Funds donated or paid to the juvenile court by private sources for the purpose of [~~community~~] compensatory service programs shall be nonlapsing.

(iv) The board may:

(A) contract with public or nonprofit institutions of higher learning for the training of personnel;

(B) conduct short-term training courses of its own and hire experts on a temporary basis for this purpose; and

(C) cooperate with the Division of Child and Family Services and other state departments or agencies in personnel training programs.

(d) The board may contract, on behalf of the juvenile court, with the United States Forest Service or other agencies or departments of the federal government or with agencies or departments of other states for the care and placement of minors adjudicated under this chapter.

(e) The powers to contract and expend funds are subject to budgetary control and procedures as provided by law.

(2) Under the direction of the presiding officer of the council, the chair shall supervise the juvenile courts to ensure uniform adherence to law and to the rules and forms adopted by the Supreme Court and Judicial Council, and to promote the proper and efficient functioning of the juvenile courts.

(3) The judges of districts having more than one judge shall elect a presiding judge. In districts comprised of five or more judges and court commissioners, the presiding judge shall receive an additional $1,000 per annum as compensation.

(4) Consistent with policies of the Judicial Council, the presiding judge shall:

(a) implement policies of the Judicial Council;

(b) exercise powers and perform administrative duties as authorized by the Judicial Council;

(c) manage the judicial business of the district; and

(d) call and preside over meetings of judges of the district.

Section 39. Section **78A-6-1205** is amended to read:

78A-6-1205. Dispositions.

(1) Youth Court dispositional options include:

(a) [~~community~~] compensatory service;

(b) participation in law-related educational classes, appropriate counseling, treatment, or other educational programs;

(c) providing periodic reports to the Youth Court;

(d) participating in mentoring programs;

(e) participation by the youth as a member of a Youth Court;

(f) letters of apology;

(g) essays; and

(h) any other disposition considered appropriate by the Youth Court and adult coordinator.

(2) Youth Courts may not impose a term of imprisonment or detention and may not impose fines.

(3) Youth Court dispositions shall be completed within 180 days from the date of referral.

(4) Youth Court dispositions shall be reduced to writing and signed by the youth and a

parent, guardian, or legal custodian indicating their acceptance of the disposition terms.

(5) Youth Court shall notify the referring source if a participant fails to successfully complete the Youth Court disposition. The referring source may then take any action it considers appropriate.

Section 40. Section **78A-6-1206** is amended to read:

78A-6-1206. Liability.

(1) A person or entity associated with the referral, evaluation, adjudication, disposition, or supervision of matters under this part may not be held civilly liable for any injury occurring to any person performing [~~community~~] compensatory service or any other activity associated with a certified Youth Court unless the person causing the injury acted in a willful or wanton manner.

(2) Persons participating in a certified Youth Court shall be considered to be volunteers for purposes of Workers' Compensation and other risk-related issues.

Section 41. Section **78B-6-115** is amended to read:

78B-6-115. Who may adopt -- Adoption of adult.

(1) For purposes of this section, "vulnerable adult" means:

(a) a person 65 years of age or older; or

(b) an adult, 18 years of age or older, who has a mental or physical impairment which substantially affects that person's ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or medical or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) carry out the activities of daily living;

(v) manage the adult's own resources; or

(vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Subject to this section and Section 78B-6-117, any adult may be adopted by another adult.

(3) The following provisions of this part apply to the adoption of an adult just as though the person being adopted were a minor:

(a) (i) Section 78B-6-108;

(ii) Section 78B-6-114;

(iii) Section 78B-6-116;

(iv) Section 78B-6-118;

(v) Section 78B-6-124;

(vi) Section 78B-6-136;

(vii) Section 78B-6-137;

(viii) Section 78B-6-138;

(ix) Section 78B-6-139;

(x) Section 78B-6-141; and

(xi) Section 78B-6-142;

(b) Subsections [~~78B-6-106~~] 78B-6-105(1), (2), and (7), except that the juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from a case where the juvenile court has continuing jurisdiction over the adult adoptee; and

(c) if the adult adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131, regardless of whether the adult adoptee resides, or will reside, with the adoptors, unless the court, based on a finding of good cause, waives the requirements of those sections.

(4) Before a court enters a final decree of adoption of an adult, the adoptee and the adoptive parent or parents shall appear before the court presiding over the adoption proceedings and execute consent to the adoption.

(5) No provision of this part, other than those listed or described in this section or Section 78B-6-117, apply to the adoption of an adult.

Section 42. **Repealer.**

This bill repeals:

Section **9-3-102, Definitions.**

Legislative Review Note
as of 1-14-09 11:21 AM

Office of Legislative Research and General Counsel

Fiscal Note

H.B. 250 - Revisor's Statute

2009 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.

1/23/2009, 4:19:19 PM, Lead Analyst: Amon, R.

Office of the Legislative Fiscal Analyst