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H.B. 213

STATUTORY CONSTRUCTION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek E. Brown

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends provisions of Titles 17 through 35A of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code.

Highlighted Provisions:

This bill:

- amends provisions of Titles 17 through 35A of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

17-3-1, as last amended by Laws of Utah 2004, Chapter 371

17-3-8, Utah Code Annotated 1953

17-8-7, as last amended by Laws of Utah 1993, Chapter 227

17-11-2, as last amended by Laws of Utah 1993, Chapter 227

17-15-16, as last amended by Laws of Utah 1993, Chapter 227

17-16-4, Utah Code Annotated 1953

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28 **17-16-9**, as last amended by Laws of Utah 1993, Chapters 33 and 227
29 **17-16-16**, as last amended by Laws of Utah 1971, Chapter 25
30 **17-16a-3**, as enacted by Laws of Utah 1983, Chapter 46
31 **17-16a-6**, as last amended by Laws of Utah 1993, Chapter 227
32 **17-18-1.9**, as enacted by Laws of Utah 1993, Chapter 38
33 **17-19-7**, Utah Code Annotated 1953
34 **17-19-14**, Utah Code Annotated 1953
35 **17-22-6**, Utah Code Annotated 1953
36 **17-22-21**, Utah Code Annotated 1953
37 **17-22-22**, Utah Code Annotated 1953
38 **17-22-23**, Utah Code Annotated 1953
39 **17-22-27**, as last amended by Laws of Utah 2004, Chapter 301
40 **17-23-16**, as last amended by Laws of Utah 2001, Chapter 241
41 **17-27a-513**, as renumbered and amended by Laws of Utah 2005, Chapter 254
42 **17-27a-518**, as renumbered and amended by Laws of Utah 2005, Chapter 254
43 **17-28-11**, as last amended by Laws of Utah 1993, Chapter 227
44 **17-30-8**, as enacted by Statewide Initiative A, Nov. 8, 1960
45 **17-30-22**, as enacted by Statewide Initiative A, Nov. 8, 1960
46 **17-31-3**, as last amended by Laws of Utah 1996, Chapter 79
47 **17-33-10**, as last amended by Laws of Utah 2003, Chapter 65
48 **17-33-15**, as last amended by Laws of Utah 1993, Chapter 227
49 **17-34-5**, as last amended by Laws of Utah 2000, Chapter 199
50 **17-35b-303**, as last amended by Laws of Utah 2007, Chapter 329
51 **17-35b-304**, as enacted by Laws of Utah 1998, Chapter 369
52 **17-36-10**, as last amended by Laws of Utah 1999, Chapter 300
53 **17-36-17**, as last amended by Laws of Utah 1999, Chapter 300
54 **17-37-4**, as last amended by Laws of Utah 2002, Chapter 95
55 **17-38-4**, as last amended by Laws of Utah 1983, Chapter 291
56 **17-41-301**, as last amended by Laws of Utah 2006, Chapter 194
57 **17-41-401**, as last amended by Laws of Utah 1997, Chapter 383
58 **17-52-401**, as last amended by Laws of Utah 2003, Chapter 131

59 **17-53-209**, as renumbered and amended by Laws of Utah 2000, Chapter 133
60 **17-53-311**, as last amended by Laws of Utah 2008, Chapters 360 and 382
61 **17B-1-304**, as last amended by Laws of Utah 2009, Chapter 388
62 **17B-1-506**, as last amended by Laws of Utah 2008, Chapter 3
63 **17B-1-510**, as renumbered and amended by Laws of Utah 2007, Chapter 329
64 **17B-1-512**, as last amended by Laws of Utah 2009, Chapters 350 and 388
65 **17B-1-607**, as renumbered and amended by Laws of Utah 2007, Chapter 329
66 **17B-2a-807**, as last amended by Laws of Utah 2010, Chapter 281
67 **17B-2a-818.5**, as last amended by Laws of Utah 2010, Chapter 229
68 **18-1-1**, as last amended by Laws of Utah 1971, Chapter 29
69 **19-1-206**, as last amended by Laws of Utah 2010, Chapters 218 and 229
70 **19-2-109.1**, as last amended by Laws of Utah 2009, Chapters 183 and 377
71 **19-2-113**, as last amended by Laws of Utah 2010, Chapter 324
72 **19-2-115**, as last amended by Laws of Utah 2008, Chapter 382
73 **19-3-302**, as last amended by Laws of Utah 2001, Chapter 107
74 **19-3-308**, as last amended by Laws of Utah 2009, Chapter 183
75 **19-4-112**, as last amended by Laws of Utah 1998, Chapter 126
76 **19-5-102**, as last amended by Laws of Utah 2001, Chapter 274
77 **19-5-115**, as last amended by Laws of Utah 2010, Chapter 324
78 **19-5-116**, as renumbered and amended by Laws of Utah 1991, Chapter 112
79 **19-5-121**, as last amended by Laws of Utah 2009, Chapter 183
80 **19-6-108**, as last amended by Laws of Utah 2007, Chapter 72
81 **19-6-116**, as renumbered and amended by Laws of Utah 1991, Chapter 112
82 **19-6-202**, as renumbered and amended by Laws of Utah 1991, Chapter 112
83 **19-6-203**, as renumbered and amended by Laws of Utah 1991, Chapter 112
84 **19-6-205**, as last amended by Laws of Utah 1993, Chapter 227
85 **19-6-413**, as last amended by Laws of Utah 1992, Chapter 214
86 **19-6-714**, as enacted by Laws of Utah 1993, Chapter 283
87 **19-6-814**, as renumbered and amended by Laws of Utah 2000, Chapter 51
88 **19-9-105**, as last amended by Laws of Utah 2008, Chapter 382
89 **19-9-109**, as renumbered and amended by Laws of Utah 2003, Chapter 184

90 **19-10-104**, as enacted by Laws of Utah 2003, Chapter 44
91 **20A-1-401**, as last amended by Laws of Utah 2008, Chapter 225
92 **20A-1-508**, as last amended by Laws of Utah 2010, Chapter 197
93 **20A-1-509.1**, as last amended by Laws of Utah 2010, Chapter 197
94 **20A-1-703**, as last amended by Laws of Utah 2010, Chapter 324
95 **20A-2-102.5**, as last amended by Laws of Utah 2008, Chapter 225
96 **20A-2-105**, as last amended by Laws of Utah 2008, Chapter 276
97 **20A-2-306**, as last amended by Laws of Utah 2007, Chapter 75
98 **20A-4-201**, as last amended by Laws of Utah 2006, Chapter 326
99 **20A-5-403**, as last amended by Laws of Utah 2009, Chapter 45
100 **20A-6-302**, as last amended by Laws of Utah 2006, Chapter 326
101 **20A-7-202**, as last amended by Laws of Utah 2008, Chapter 237
102 **20A-7-204.1**, as last amended by Laws of Utah 2010, Chapter 90
103 **20A-7-702 (Superseded 01/01/12)**, as last amended by Laws of Utah 2008, Chapters 3,
104 82, and 225
105 **20A-7-702 (Effective 01/01/12)**, as last amended by Laws of Utah 2008, Chapters 3,
106 82, 225, and 248
107 **20A-7-706**, as last amended by Laws of Utah 2008, Chapter 225
108 **20A-9-403**, as last amended by Laws of Utah 2008, Chapter 225
109 **20A-11-401**, as last amended by Laws of Utah 2009, Chapter 361
110 **20A-11-1603**, as enacted by Laws of Utah 2010, Chapter 12
111 **20A-14-103**, as last amended by Laws of Utah 2008, Chapter 8
112 **20A-14-201**, as last amended by Laws of Utah 2007, Chapter 215
113 **20A-14-202**, as last amended by Laws of Utah 2008, Chapter 8
114 **22-1-11**, Utah Code Annotated 1953
115 **22-3-104**, as enacted by Laws of Utah 2004, Chapter 285
116 **22-3-202**, as enacted by Laws of Utah 2004, Chapter 285
117 **22-3-302**, as enacted by Laws of Utah 2004, Chapter 285
118 **22-3-303**, as enacted by Laws of Utah 2004, Chapter 285
119 **22-3-403**, as enacted by Laws of Utah 2004, Chapter 285
120 **22-3-405**, as enacted by Laws of Utah 2004, Chapter 285

121 **22-3-406**, as enacted by Laws of Utah 2004, Chapter 285
122 **22-3-411**, as enacted by Laws of Utah 2004, Chapter 285
123 **22-3-414**, as enacted by Laws of Utah 2004, Chapter 285
124 **22-3-505**, as last amended by Laws of Utah 2009, Chapter 96
125 **22-3-506**, as enacted by Laws of Utah 2004, Chapter 285
126 **22-3-601**, as enacted by Laws of Utah 2004, Chapter 285
127 **23-13-2**, as last amended by Laws of Utah 2010, Chapter 256
128 **23-13-17**, as last amended by Laws of Utah 2005, Chapter 2
129 **23-14-2**, as last amended by Laws of Utah 2010, Chapter 286
130 **23-15-2**, as enacted by Laws of Utah 1971, Chapter 46
131 **23-15-9**, as last amended by Laws of Utah 2008, Chapter 69
132 **23-16-3**, as last amended by Laws of Utah 2003, Chapter 228
133 **23-16-4**, as last amended by Laws of Utah 2009, Chapter 183
134 **23-17-4**, as enacted by Laws of Utah 1971, Chapter 46
135 **23-17-6**, as last amended by Laws of Utah 1998, Chapter 242
136 **23-17-8**, as enacted by Laws of Utah 1971, Chapter 46
137 **23-18-5**, as last amended by Laws of Utah 1980, Chapter 28
138 **23-19-9**, as last amended by Laws of Utah 2008, Chapter 382
139 **23-19-14**, as last amended by Laws of Utah 2003, Chapter 171
140 **23-19-17.5**, as last amended by Laws of Utah 2007, Chapter 187
141 **23-19-38.2**, as last amended by Laws of Utah 2008, Chapter 382
142 **23-20-1**, as last amended by Laws of Utah 2002, Chapter 185
143 **23-20-9**, as last amended by Laws of Utah 2007, Chapter 136
144 **23-20-14**, as last amended by Laws of Utah 2000, Chapter 6
145 **23-20-20**, as last amended by Laws of Utah 2006, Chapter 325
146 **23-20-28**, as last amended by Laws of Utah 1995, Chapter 211
147 **23-20-29**, as enacted by Laws of Utah 1986, Chapter 67
148 **23-20-30**, as last amended by Laws of Utah 1995, Chapter 211
149 **23-20-31**, as last amended by Laws of Utah 2009, Chapter 256
150 **23-21-2**, as last amended by Laws of Utah 1993, Chapter 227
151 **23-22-1**, as last amended by Laws of Utah 1998, Chapter 140

152 **23-22-3**, as last amended by Laws of Utah 1992, Chapter 260
153 **23-23-11**, as last amended by Laws of Utah 1997, Chapter 258
154 **23-24-1**, as last amended by Laws of Utah 2010, Chapter 289
155 **24-1-8**, as last amended by Laws of Utah 2007, Chapter 180
156 **25-5-2**, as last amended by Laws of Utah 1995, Chapter 20
157 **25-6-9**, as last amended by Laws of Utah 2000, Chapter 252
158 **26-1-5**, as last amended by Laws of Utah 2008, Chapter 382
159 **26-1-7.5**, as last amended by Laws of Utah 2010, Chapter 286
160 **26-1-11**, as enacted by Laws of Utah 1981, Chapter 126
161 **26-1-25**, as enacted by Laws of Utah 1981, Chapter 126
162 **26-1-32**, as enacted by Laws of Utah 1981, Chapter 126
163 **26-3-8**, as enacted by Laws of Utah 1981, Chapter 126
164 **26-4-2**, as last amended by Laws of Utah 2009, Chapter 223
165 **26-4-9**, as last amended by Laws of Utah 1999, Chapter 289
166 **26-4-12**, as last amended by Laws of Utah 2000, Chapter 86
167 **26-4-20**, as last amended by Laws of Utah 1993, Chapter 38
168 **26-6-3**, as last amended by Laws of Utah 2008, Chapter 130
169 **26-6-18**, as enacted by Laws of Utah 1981, Chapter 126
170 **26-6-20**, as last amended by Laws of Utah 2000, Chapter 86
171 **26-6b-3**, as last amended by Laws of Utah 2008, Chapter 115
172 **26-6b-3.1**, as enacted by Laws of Utah 2006, Chapter 185
173 **26-7-1**, as enacted by Laws of Utah 1981, Chapter 126
174 **26-8a-103**, as last amended by Laws of Utah 2010, Chapter 286
175 **26-8a-203**, as last amended by Laws of Utah 2000, Chapter 305
176 **26-8a-207**, as last amended by Laws of Utah 2010, Chapter 161
177 **26-8a-253**, as last amended by Laws of Utah 2006, Chapter 310
178 **26-8a-405.2**, as last amended by Laws of Utah 2010, Chapter 187
179 **26-8a-405.3**, as last amended by Laws of Utah 2010, Chapter 187
180 **26-8a-405.5**, as enacted by Laws of Utah 2010, Chapter 187
181 **26-8a-406**, as last amended by Laws of Utah 2009, Chapter 388
182 **26-8a-408**, as enacted by Laws of Utah 1999, Chapter 141

183 **26-8a-410**, as enacted by Laws of Utah 1999, Chapter 141
184 **26-8a-413**, as last amended by Laws of Utah 2003, Chapter 213
185 **26-10b-102**, as renumbered and amended by Laws of Utah 2010, Chapter 340
186 **26-15-8**, as last amended by Laws of Utah 2006, Chapter 91
187 **26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
188 **26-18-4**, as last amended by Laws of Utah 2008, Chapter 62
189 **26-18-5**, as last amended by Laws of Utah 1988, Chapter 21
190 **26-18-10**, as last amended by Laws of Utah 2008, Chapter 62
191 **26-18-11**, as enacted by Laws of Utah 1988, Chapter 12
192 **26-18-501**, as enacted by Laws of Utah 2004, Chapter 215
193 **26-18-502**, as enacted by Laws of Utah 2004, Chapter 215
194 **26-18-503**, as last amended by Laws of Utah 2008, Chapter 347
195 **26-18-505**, as enacted by Laws of Utah 2008, Chapter 219
196 **26-19-7**, as last amended by Laws of Utah 2005, Chapter 103
197 **26-19-8**, as last amended by Laws of Utah 2007, Chapter 64
198 **26-20-3**, as last amended by Laws of Utah 1986, Chapter 46
199 **26-20-6**, as last amended by Laws of Utah 1986, Chapter 46
200 **26-20-8**, as enacted by Laws of Utah 1981, Chapter 126
201 **26-20-9.5**, as last amended by Laws of Utah 2007, Chapter 48
202 **26-20-12**, as repealed and reenacted by Laws of Utah 2007, Chapter 48
203 **26-20-14**, as enacted by Laws of Utah 2007, Chapter 48
204 **26-21-9**, as last amended by Laws of Utah 2000, Chapter 86
205 **26-21-9.5**, as last amended by Laws of Utah 2009, Chapter 267
206 **26-23-7**, as enacted by Laws of Utah 1981, Chapter 126
207 **26-23-10**, as enacted by Laws of Utah 1981, Chapter 126
208 **26-23b-104**, as enacted by Laws of Utah 2002, Chapter 155
209 **26-25-5**, as last amended by Laws of Utah 1991, Chapter 241
210 **26-28-105**, as enacted by Laws of Utah 2007, Chapter 60
211 **26-28-106**, as enacted by Laws of Utah 2007, Chapter 60
212 **26-28-107**, as enacted by Laws of Utah 2007, Chapter 60
213 **26-28-111**, as enacted by Laws of Utah 2007, Chapter 60

214 **26-28-114**, as enacted by Laws of Utah 2007, Chapter 60
215 **26-28-120**, as enacted by Laws of Utah 2007, Chapter 60
216 **26-28-121**, as last amended by Laws of Utah 2008, Chapter 32
217 **26-28-124**, as enacted by Laws of Utah 2007, Chapter 60
218 **26-31-1**, as enacted by Laws of Utah 1981, Chapter 126
219 **26-33a-104**, as last amended by Laws of Utah 2008, Chapter 382
220 **26-33a-106.5**, as last amended by Laws of Utah 2005, Chapter 266
221 **26-33a-111**, as enacted by Laws of Utah 1990, Chapter 305
222 **26-34-2**, as last amended by Laws of Utah 2007, Chapter 306
223 **26-35a-107**, as enacted by Laws of Utah 2004, Chapter 284
224 **26-36a-102**, as enacted by Laws of Utah 2010, Chapter 179
225 **26-36a-203**, as enacted by Laws of Utah 2010, Chapter 179
226 **26-40-110**, as last amended by Laws of Utah 2010, Chapter 351
227 **26-41-104**, as last amended by Laws of Utah 2008, Chapters 64 and 382
228 **26-47-103**, as last amended by Laws of Utah 2010, Chapter 323
229 **26-49-202**, as enacted by Laws of Utah 2008, Chapter 242
230 **26-49-701**, as enacted by Laws of Utah 2008, Chapter 242
231 **26A-1-112**, as last amended by Laws of Utah 2002, Chapter 249
232 **26A-1-126**, as enacted by Laws of Utah 2005, Chapter 153
233 **29-1-2**, as enacted by Laws of Utah 1953, Chapter 47
234 **29-1-3**, as enacted by Laws of Utah 1953, Chapter 47
235 **30-1-4.5**, as last amended by Laws of Utah 2004, Chapter 261
236 **30-1-5**, as last amended by Laws of Utah 2001, Chapter 129
237 **30-1-10**, Utah Code Annotated 1953
238 **30-1-32**, as last amended by Laws of Utah 1993, Chapter 227
239 **30-1-33**, as enacted by Laws of Utah 1971, Chapter 64
240 **30-1-35**, as enacted by Laws of Utah 1971, Chapter 64
241 **30-1-37**, as enacted by Laws of Utah 1971, Chapter 64
242 **30-2-7**, Utah Code Annotated 1953
243 **30-3-16.7**, as enacted by Laws of Utah 1969, Chapter 72
244 **30-3-17**, as last amended by Laws of Utah 1969, Chapter 72

245 **30-3-17.1**, as last amended by Laws of Utah 2008, Chapter 3
246 **30-3-18**, as last amended by Laws of Utah 1997, Chapter 215
247 **30-3-33**, as last amended by Laws of Utah 2008, Chapter 146
248 **30-8-3**, as enacted by Laws of Utah 1994, Chapter 105
249 **31A-2-301**, as last amended by Laws of Utah 1987, Chapters 91 and 161
250 **31A-2-302**, as last amended by Laws of Utah 2008, Chapter 382
251 **31A-5-208**, as last amended by Laws of Utah 1991, Chapter 5
252 **31A-5-305**, as last amended by Laws of Utah 2007, Chapter 309
253 **31A-6a-104**, as last amended by Laws of Utah 2008, Chapter 345
254 **31A-8a-201**, as enacted by Laws of Utah 2005, Chapter 58
255 **31A-8a-203**, as last amended by Laws of Utah 2008, Chapter 382
256 **31A-8a-204**, as enacted by Laws of Utah 2005, Chapter 58
257 **31A-8a-205**, as enacted by Laws of Utah 2005, Chapter 58
258 **31A-8a-206**, as enacted by Laws of Utah 2005, Chapter 58
259 **31A-8a-207**, as enacted by Laws of Utah 2005, Chapter 58
260 **31A-9-503**, as enacted by Laws of Utah 1985, Chapter 242
261 **31A-11-107**, as last amended by Laws of Utah 2003, Chapter 298
262 **31A-15-203**, as enacted by Laws of Utah 1992, Chapter 258
263 **31A-15-207**, as last amended by Laws of Utah 2003, Chapter 298
264 **31A-15-210**, as last amended by Laws of Utah 2003, Chapter 298
265 **31A-17-503**, as last amended by Laws of Utah 2008, Chapter 382
266 **31A-17-506**, as last amended by Laws of Utah 2010, Chapter 324
267 **31A-17-507**, as last amended by Laws of Utah 2001, Chapter 116
268 **31A-17-510**, as enacted by Laws of Utah 1993, Chapter 305
269 **31A-17-512**, as enacted by Laws of Utah 1993, Chapter 305
270 **31A-18-106**, as last amended by Laws of Utah 2008, Chapter 257
271 **31A-19a-206**, as renumbered and amended by Laws of Utah 1999, Chapter 130
272 **31A-19a-208**, as renumbered and amended by Laws of Utah 1999, Chapter 130
273 **31A-19a-309**, as renumbered and amended by Laws of Utah 1999, Chapter 130
274 **31A-21-101**, as last amended by Laws of Utah 2006, Chapter 197
275 **31A-21-312**, as last amended by Laws of Utah 1986, Chapter 204

276 **31A-21-313**, as last amended by Laws of Utah 2008, Chapter 3
277 **31A-21-403**, as last amended by Laws of Utah 2001, Chapter 116
278 **31A-22-305**, as last amended by Laws of Utah 2010, Chapter 354
279 **31A-22-408**, as last amended by Laws of Utah 1987, Chapter 91
280 **31A-22-610.5**, as last amended by Laws of Utah 2010, Chapter 10
281 **31A-22-611**, as last amended by Laws of Utah 2006, Chapter 188
282 **31A-22-613.5**, as last amended by Laws of Utah 2010, Chapters 68, 149 and last
283 amended by Coordination Clause, Laws of Utah 2010, Chapter 149
284 **31A-22-618.5**, as last amended by Laws of Utah 2010, Chapter 68
285 **31A-22-625**, as last amended by Laws of Utah 2010, Chapters 10 and 68
286 **31A-22-634**, as enacted by Laws of Utah 2003, Chapter 188
287 **31A-22-636**, as enacted by Laws of Utah 2009, Chapter 11
288 **31A-22-637**, as enacted by Laws of Utah 2009, Chapter 11
289 **31A-22-716**, as last amended by Laws of Utah 2005, Chapter 71
290 **31A-22-722.5**, as last amended by Laws of Utah 2010, Chapters 10, 149 and last
291 amended by Coordination Clause, Laws of Utah 2010, Chapter 149
292 **31A-22-723**, as last amended by Laws of Utah 2010, Chapter 68
293 **31A-22-806**, as last amended by Laws of Utah 2001, Chapter 116
294 **31A-22-1406**, as enacted by Laws of Utah 1991, Chapter 243
295 **31A-22-1409**, as last amended by Laws of Utah 2001, Chapter 116
296 **31A-23a-501**, as last amended by Laws of Utah 2010, Chapter 10
297 **31A-23a-602**, as renumbered and amended by Laws of Utah 2003, Chapter 298
298 **31A-23a-702**, as renumbered and amended by Laws of Utah 2003, Chapter 298
299 **31A-23a-806**, as renumbered and amended by Laws of Utah 2003, Chapter 298
300 **31A-27a-202**, as enacted by Laws of Utah 2007, Chapter 309
301 **31A-27a-205**, as enacted by Laws of Utah 2007, Chapter 309
302 **31A-27a-502**, as enacted by Laws of Utah 2007, Chapter 309
303 **31A-27a-701**, as enacted by Laws of Utah 2007, Chapter 309
304 **31A-30-107.3**, as last amended by Laws of Utah 2007, Chapter 307
305 **31A-30-107.5**, as last amended by Laws of Utah 2007, Chapter 307
306 **31A-30-110**, as last amended by Laws of Utah 2002, Chapter 308

307 **31A-30-206**, as enacted by Laws of Utah 2009, Chapter 12
308 **31A-34-104**, as last amended by Laws of Utah 2009, Chapter 183
309 **31A-34-107**, as enacted by Laws of Utah 1996, Chapter 143
310 **31A-36-107**, as last amended by Laws of Utah 2009, Chapter 355
311 **31A-36-109**, as last amended by Laws of Utah 2009, Chapter 355
312 **31A-36-110**, as last amended by Laws of Utah 2009, Chapter 355
313 **31A-36-112**, as last amended by Laws of Utah 2009, Chapter 355
314 **31A-36-114**, as last amended by Laws of Utah 2009, Chapter 355
315 **31A-37-105**, as enacted by Laws of Utah 2003, Chapter 251
316 **31A-37-106**, as last amended by Laws of Utah 2008, Chapters 302 and 382
317 **31A-37-202**, as last amended by Laws of Utah 2009, Chapter 183
318 **31A-37-301**, as last amended by Laws of Utah 2004, Chapter 312
319 **31A-37-302**, as enacted by Laws of Utah 2003, Chapter 251
320 **31A-37-306**, as last amended by Laws of Utah 2004, Chapter 312
321 **31A-37-402**, as last amended by Laws of Utah 2008, Chapter 302
322 **31A-37-601**, as enacted by Laws of Utah 2004, Chapter 312
323 **31A-37a-205**, as enacted by Laws of Utah 2008, Chapter 302
324 **32B-1-407 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
325 **32B-1-505 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
326 **32B-6-407 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
327 **32B-8-304 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
328 **34-19-1**, as enacted by Laws of Utah 1969, Chapter 85
329 **34-19-9**, as enacted by Laws of Utah 1969, Chapter 85
330 **34-19-10**, as enacted by Laws of Utah 1969, Chapter 85
331 **34-19-13**, as enacted by Laws of Utah 1969, Chapter 85
332 **34-20-3**, as last amended by Laws of Utah 2010, Chapter 286
333 **34-20-5**, as enacted by Laws of Utah 1969, Chapter 85
334 **34-20-8**, as enacted by Laws of Utah 1969, Chapter 85
335 **34-23-208**, as renumbered and amended by Laws of Utah 1990, Chapter 8
336 **34-25-2**, as enacted by Laws of Utah 1969, Chapter 85
337 **34-28-5**, as last amended by Laws of Utah 1995, Chapter 17

338 **34-28-6**, as enacted by Laws of Utah 1969, Chapter 85
339 **34-28-14**, as last amended by Laws of Utah 1996, Chapter 240
340 **34-29-1**, as enacted by Laws of Utah 1969, Chapter 85
341 **34-32-4**, as last amended by Laws of Utah 2004, Chapter 220
342 **34-34-2**, as enacted by Laws of Utah 1969, Chapter 85
343 **34-34-15**, as enacted by Laws of Utah 1969, Chapter 85
344 **34-36-3**, as enacted by Laws of Utah 1969, Chapter 85
345 **34-41-106**, as last amended by Laws of Utah 1997, Chapter 375
346 **34A-1-408**, as renumbered and amended by Laws of Utah 1997, Chapter 375
347 **34A-1-409**, as renumbered and amended by Laws of Utah 1997, Chapter 375
348 **34A-2-413**, as last amended by Laws of Utah 2010, Chapter 59
349 **34A-2-802**, as renumbered and amended by Laws of Utah 1997, Chapter 375
350 **34A-3-104**, as renumbered and amended by Laws of Utah 1997, Chapter 375
351 **34A-6-108**, as renumbered and amended by Laws of Utah 1997, Chapter 375
352 **34A-6-202**, as last amended by Laws of Utah 2008, Chapter 382
353 **34A-6-301**, as last amended by Laws of Utah 2008, Chapters 3 and 382
354 **34A-7-102**, as last amended by Laws of Utah 2006, Chapter 155
355 **35A-3-106**, as renumbered and amended by Laws of Utah 1997, Chapter 174
356 **35A-3-108**, as last amended by Laws of Utah 1998, Chapter 188
357 **35A-3-304**, as last amended by Laws of Utah 2007, Chapter 81
358 **35A-3-310.5**, as enacted by Laws of Utah 2008, Chapter 59
359 **35A-3-503**, as renumbered and amended by Laws of Utah 1997, Chapter 174
360 **35A-4-303**, as last amended by Laws of Utah 2008, Chapter 110
361 **35A-4-304**, as last amended by Laws of Utah 2008, Chapter 382
362 **35A-4-305**, as last amended by Laws of Utah 2010, Chapter 278
363 **35A-4-309**, as last amended by Laws of Utah 2006, Chapter 22
364 **35A-4-311**, as last amended by Laws of Utah 2001, Chapter 265
365 **35A-4-404**, as renumbered and amended by Laws of Utah 1996, Chapter 240
366 **35A-4-501**, as last amended by Laws of Utah 2010, Chapters 277 and 278
367 **35A-4-506**, as last amended by Laws of Utah 2010, Chapters 277 and 278
368

369 *Be it enacted by the Legislature of the state of Utah:*
370 Section 1. Section **17-3-1** is amended to read:
371 **17-3-1. By petition -- Election -- Ballots.**
372 Whenever any number of the qualified electors of any portion of any county desire to
373 have the territory within which they reside created into a new county they may [~~petition~~
374 ~~therefor~~] file a petition for the creation of a new county with the county legislative body of the
375 county in which they reside. [~~Such~~] The petition [~~must~~] shall be signed by at least [~~1/4~~]
376 one-fourth of the qualified electors as shown by the registration list of the last preceding
377 general election, residing in that portion of the county to be created into a new county, and by
378 not less than [~~1/4~~] one-fourth of the qualified electors residing in the remaining portion of
379 [~~said~~] the county. [~~Such~~] The petition [~~must~~] shall be presented on or before the first Monday
380 in May of any year, and shall propose the name and define the boundaries of [~~such~~] the new
381 county. The county legislative body [~~must~~] shall cause the proposition to be submitted to the
382 legal voters residing in the county at a special election to be held according to the dates
383 established in Section 20A-1-204, first causing 30 days' notice of [~~such~~] the election to be
384 given in the manner provided by law for giving notice of general elections. [~~Such~~] The
385 election shall be held, the result [~~thereof~~] canvassed, and returns made under the provisions of
386 the general election laws. The form of ballot to be used at such election shall be:
387 For the creation of (supplying the name proposed) county.
388 Against the creation of (supplying the name proposed) county.
389 Section 2. Section **17-3-8** is amended to read:
390 **17-3-8. Prior offenses.**
391 [~~All offenses theretofore committed in such new county in which prosecution shall not~~
392 ~~have been commenced~~] An offense, for which prosecution has not commenced, that was
393 committed within the boundaries of a new county before the new county was created, may be
394 prosecuted to judgment and execution in [~~such~~] the new county.
395 Section 3. Section **17-8-7** is amended to read:
396 **17-8-7. Declaration of drought emergency -- Appropriation -- Tax levy.**
397 The county legislative body of each county may at any regular meeting or at a special
398 meeting called for such purpose, declare that an emergency drought exists in said county; and
399 thereupon may appropriate from the money not otherwise appropriated in the county general

400 fund such funds as shall be necessary for the gathering of information upon, and aiding in any
401 program for increased precipitation within said county or in conjunction with any other county
402 or counties, or that if there are not sufficient funds available in the county general fund for such
403 purpose, the county legislative body may, during any such emergency so declared by them,
404 assess, levy, and direct the county to collect annually to aid in any program of increased
405 precipitation. The provisions of Sections 17-19-1 to 17-19-28 relating to budgeting [~~shall~~] do
406 not apply to appropriations necessitated by such an emergency.
407 Section 4. Section **17-11-2** is amended to read:
408 **17-11-2. Initiating petitions -- Limitation.**
409 Whenever there [~~shall be~~] is presented to the county legislative body of any county a
410 petition signed by qualified electors of [~~such~~] the county, in number equal to a majority of the
411 votes cast at the preceding general election, praying for the submission of the question of the
412 removal of the county seat, it shall be the duty of the county legislative body to submit the
413 question of [~~such~~] the removal at the next general election to the qualified electors of [~~such~~] the
414 county; and [~~such~~] the election shall be conducted and the returns canvassed in all respects as
415 provided by law for the conducting of general elections and canvassing the returns [~~thereof~~]. A
416 proposition of removal of the county seat [~~shall not~~] may not be submitted in the same county
417 more than once in four years, or within four years [~~from the time that any such proposition has~~
418 ~~been theretofore~~] after the day on which a proposition of removal of the county seat is
419 submitted.
420 Section 5. Section **17-15-16** is amended to read:
421 **17-15-16. Warrants -- Payment -- Registration -- Duty of auditor.**
422 Warrants drawn by order of the county executive on the county treasurer for current
423 expenses during each year [~~must~~] shall specify the liability for which they are drawn, when
424 they accrued, and the funds from which they are to be paid, and [~~must~~] shall be paid in the
425 order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it [~~must~~]
426 shall be registered and [~~thereafter~~] then paid in the order of registration. Accounts for county
427 charges of every description [~~must~~] shall be presented to the auditor and county executive to be
428 audited as prescribed in this title.
429 Section 6. Section **17-16-4** is amended to read:
430 **17-16-4. Election of officer to consolidated office.**

431 When offices are united and consolidated [~~but~~]:
432 (1) only one person shall be elected to fill the united and consolidated offices [~~so~~
433 ~~united and consolidated, and he must~~]; and
434 (2) the person elected shall:
435 (a) take the oath and give the bond required for[~~, and~~] each of the offices; and
436 (b) discharge all the duties pertaining to[~~,~~] each of the offices.
437 Section 7. Section **17-16-9** is amended to read:
438 **17-16-9. Officers at county seats -- Office hours.**
439 (1) The elected county officers of all counties, except those in counties having a
440 population of less than 8,000, shall have their offices at the county seats.
441 (2) (a) In all counties the clerk, sheriff, recorder, auditor, treasurer, assessor, and
442 attorney shall keep their offices open for the transaction of business as authorized by
443 resolution of the county legislative body.
444 (b) If the county legislative body does not authorize hours of operation for Saturdays,
445 then the hours served by the employees of the county [~~shall not~~] may not be less than under
446 their present schedule.
447 (c) (i) Any act authorized, required, or permitted to be performed at or by, or with
448 respect to, any county office on a Saturday when the county office is closed, may be performed
449 on the next business day.
450 (ii) No liability or loss of rights of any kind may result from [~~that delay~~] the delay
451 described in Subsection (2)(c)(i).
452 Section 8. Section **17-16-16** is amended to read:
453 **17-16-16. Commissioners' traveling expenses.**
454 (1) The members of the board of county commissioners [~~shall not~~] may not receive any
455 compensation in addition to that provided in Section 17-16-14 for any special or committee
456 work, but, subject to Subsection (2), each member shall be paid the amount of [~~his~~] the
457 member's actual and reasonable traveling expenses in attending the regular and special sessions
458 of the board and in the discharge of necessary duties[~~; provided, that~~].
459 (2) Before receiving payment for the actual and reasonable traveling expenses
460 described in Subsection (1), the member shall:
461 (a) submit an itemized statement [~~shall be made~~] showing in detail the expenses

462 incurred[~~, and shall be subscribed and sworn to by the member claiming such expenses.~~]; and
463 (b) subscribe and swear to the statement described in Subsection (2)(a).
464 Section 9. Section **17-16a-3** is amended to read:
465 **17-16a-3. Definitions.**
466 As used in this part:
467 (1) "Appointed officer" means any person appointed to any statutory office or position
468 or any other person appointed to any position of employment with a county, except special
469 employees. Appointed officers include, but are not limited to persons serving on special,
470 regular or full-time committees, agencies, or boards whether or not such persons are
471 compensated for their services. The use of the word "officer" in this part is not intended to
472 make appointed persons or employees "officers" of the county.
473 (2) "Assist" means to act, or offer or agree to act, in such a way as to help, represent,
474 aid, advise, furnish information to, or otherwise provide assistance to a person or business
475 entity, believing that such action is of help, aid, advice, or assistance to such person or business
476 entity and with the intent to so assist such person or business entity.
477 (3) "Business entity" means a sole proprietorship, partnership, association, joint
478 venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on
479 a business.
480 (4) "Compensation" means anything of economic value, however designated, which is
481 paid, loaned, granted, given, donated or transferred to any person or business entity for or in
482 consideration of personal services, materials, property, or any other thing whatsoever.
483 (5) "Elected officer" means any person elected or appointed to any office in the county.
484 (6) "Governmental action" means any action on the part of a county including[~~, but not~~
485 ~~limited to~~]:
486 (a) any decision, determination, finding, ruling, or order; and
487 (b) any grant, payment, award, license, contract, subcontract, transaction, decision,
488 sanction, or approval, or the denial thereof, or the failure to act in respect to.
489 (7) "Special employee" means any person hired on the basis of a contract to perform a
490 special service for the county pursuant to an award of a contract following a public bid.
491 (8) "Substantial interest" means the ownership, either legally or equitably, by an
492 individual, [~~his~~] the individual's spouse, and [~~his~~] the individual's minor children, of at least

493 10% of the outstanding shares of a corporation or 10% interest in any other business entity.
494 Section 10. Section **17-16a-6** is amended to read:
495 **17-16a-6. Interest in business entity regulated by county -- Disclosure.**
496 Every appointed or elected officer who is an officer, director, agent, or employee or the
497 owner of a substantial interest in any business entity which is subject to the regulation of the
498 county in which [~~he~~] the officer is an elected or appointed officer shall disclose the position
499 held and the precise nature and value of [~~his~~] the officer's interest upon first becoming
500 appointed or elected, and again during January of each year thereafter during which [~~he~~] the
501 officer continues to be an appointed or elected officer. The disclosure shall be made in a sworn
502 statement filed with the county legislative body. The commission shall report the substance of
503 all such disclosure statements to the members of the governing body or may provide to the
504 members of the governing body, copies of the disclosure statement within 30 days after the
505 statement is received. This section does not apply to instances where the value of the interest
506 does not exceed $2,000, and life insurance policies and annuities [~~shall not~~] may not be
507 considered in determining the value of [~~any such~~] the interest.
508 Section 11. Section **17-18-1.9** is amended to read:
509 **17-18-1.9. Creation of prosecution district by ordinance or interlocal agreement.**
510 (1) The county governing body may create a countywide state prosecution district by
511 ordinance.
512 (2) (a) Two or more counties, whether or not contiguous, may unite to create and
513 maintain a state prosecution district by interlocal agreement pursuant to Title 11, Chapter 13.
514 (b) At the time of the creation of the prosecution district, the participating counties
515 shall be located within the same judicial district.
516 (3) The county governing body or bodies [~~shall not~~] may not dissolve a prosecution
517 district during the term of office of an elected or appointed district attorney.
518 Section 12. Section **17-19-7** is amended to read:
519 **17-19-7. Current accounts with treasurer.**
520 The auditor [~~must~~] shall keep accounts current with the treasurer.
521 Section 13. Section **17-19-14** is amended to read:
522 **17-19-14. Duties -- Omnibus provision.**
523 The auditor [~~must~~] shall perform such other duties as may be required by law.

524 Section 14. Section **17-22-6** is amended to read:
525 **17-22-6. Service of process on prisoners -- Penalty.**
526 (1) A sheriff or jailer upon whom a paper in a judicial proceeding directed to a prisoner
527 in [~~his~~] the sheriff's or jailer's custody is served [~~must~~] shall forthwith deliver [~~it~~] the paper to
528 the prisoner, with a note thereon of the time of its service. [~~For neglect to do so he~~]
529 (2) A sheriff or jailer who neglects to comply with Subsection (1) is liable to the
530 prisoner for all damages occasioned [~~thereby~~] by that neglect.
531 Section 15. Section **17-22-21** is amended to read:
532 **17-22-21. Process justifies sheriff's action.**
533 A sheriff is justified in the execution of, and [~~must~~] shall execute, all process, writs and
534 orders regular on their face and issued by competent authority.
535 Section 16. Section **17-22-22** is amended to read:
536 **17-22-22. Process to be exhibited.**
537 The officer executing process [~~must~~] shall then, and at all times subsequent as long as
538 [~~he~~] the officer retains it, upon request show the same, with all papers attached, to any
539 interested person [~~interested therein~~].
540 Section 17. Section **17-22-23** is amended to read:
541 **17-22-23. Crier of court.**
542 The sheriff in attendance upon court [~~must~~] shall, if required by the court, act as crier
543 [~~thereof~~] for the court, call the parties and witnesses and other persons bound to appear at the
544 court, and make proclamation of the opening and adjournment of court and of any other matter
545 under its direction.
546 Section 18. Section **17-22-27** is amended to read:
547 **17-22-27. Sheriff -- Assignment of court bailiffs -- Contract and costs.**
548 (1) The sheriff shall assign law enforcement officers or special function officers, as
549 defined under Sections 53-13-103 and 53-13-105, to serve as court bailiffs and security officers
550 in the courts of record and county justice courts as required by the rules of the Judicial
551 Council.
552 (2) (a) The state court administrator shall enter into a contract with the county sheriff
553 for bailiffs and building security officers for the district and juvenile courts within the county.
554 The contract [~~shall not~~] may not exceed amounts appropriated by the Legislature for that

555 purpose. The county shall assume costs related to security administration, supervision, travel,
556 equipment, and training of bailiffs.
557 (b) The contract shall specify the agreed services, costs of services, and terms of
558 payment.
559 (c) If the court is located in the same facility as a state or local law enforcement agency
560 and the county sheriff's office is not in close proximity to the court, the State Court
561 Administrator in consultation with the sheriff may enter into a contract with the state or local
562 law enforcement agency for bailiff and security services subject to meeting all other
563 requirements of this section. If the services are provided by another agency, the county sheriff
564 shall have no responsibility for the services under this section.
565 (3) (a) At the request of the court, the sheriff may appoint as a law clerk bailiff
566 graduates of a law school accredited by the American Bar Association to provide security and
567 legal research assistance. Any law clerk who is also a bailiff shall meet the requirements of
568 Subsection (1) of this section.
569 (b) The sheriff may appoint a law clerk bailiff by contract for a period not to exceed
570 two years, who shall be exempt from the deputy sheriff merit service commission.
571 Section 19. Section **17-23-16** is amended to read:
572 **17-23-16. Resurveys.**
573 In the resurvey of lands surveyed under the authority of the United States, the county
574 surveyor or [~~his~~] the county surveyor's designee shall observe the following rules:
575 (1) Section and quarter-section corners, and all other corners established by the
576 government survey, shall stand as the true corner.
577 (2) Missing corners shall be reestablished at the point where existing evidence would
578 indicate the original corner was located by the government survey.
579 (3) In all cases, missing corners [~~must~~] shall be reestablished with reference to the
580 United States Manual of Surveying Instructions.
581 Section 20. Section **17-27a-513** is amended to read:
582 **17-27a-513. Manufactured homes.**
583 (1) For purposes of this section, a manufactured home is the same as defined in Section
584 58-56-3, except that the manufactured home [~~must~~] shall be attached to a permanent
585 foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and

586 frost protection in compliance with the applicable building code. All appendages, including
587 carports, garages, storage buildings, additions, or alterations [~~must~~] shall be built in compliance
588 with the applicable building code.
589 (2) A manufactured home may not be excluded from any land use zone or area in
590 which a single-family residence would be permitted, provided the manufactured home
591 complies with all local land use ordinances, building codes, and any restrictive covenants,
592 applicable to a single-family residence within that zone or area.
593 (3) A county may not:
594 (a) adopt or enforce an ordinance or regulation that treats a proposed development that
595 includes manufactured homes differently than one that does not include manufactured homes;
596 or
597 (b) reject a development plan based on the fact that the development is expected to
598 contain manufactured homes.
599 Section 21. Section **17-27a-518** is amended to read:
600 **17-27a-518. Elderly residential facilities in areas zoned exclusively for**
601 **single-family dwellings.**
602 (1) For purposes of this section:
603 (a) no person who is being treated for alcoholism or drug abuse may be placed in a
604 residential facility for elderly persons; and
605 (b) placement in a residential facility for elderly persons shall be on a strictly voluntary
606 basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a
607 correctional institution.
608 (2) Subject to the granting of a conditional use permit, a residential facility for elderly
609 persons shall be allowed in any zone that is regulated to permit exclusively single-family
610 dwelling use, if that facility:
611 (a) conforms to all applicable health, safety, land use, and building codes;
612 (b) is capable of use as a residential facility for elderly persons without structural or
613 landscaping alterations that would change the structure's residential character; and
614 (c) conforms to the county's criteria, adopted by ordinance, governing the location of
615 residential facilities for elderly persons in areas zoned to permit exclusively single-family
616 dwellings.

617 (3) A county may, by ordinance, provide that no residential facility for elderly persons
618 be established within three-quarters mile of another existing residential facility for elderly
619 persons or residential facility for persons with a disability.
620 (4) The use granted and permitted by this section is nontransferable and terminates if
621 the structure is devoted to a use other than as a residential facility for elderly persons or if the
622 structure fails to comply with applicable health, safety, and building codes.
623 (5) (a) County ordinances shall prohibit discrimination against elderly persons and
624 against residential facilities for elderly persons.
625 (b) The decision of a county regarding the application for a permit by a residential
626 facility for elderly persons [~~must~~] shall be based on legitimate land use criteria and may not be
627 based on the age of the facility's residents.
628 (6) The requirements of this section that a residential facility for elderly persons obtain
629 a conditional use permit or other permit do not apply if the facility meets the requirements of
630 existing land use ordinances that allow a specified number of unrelated persons to live
631 together.
632 Section 22. Section **17-28-11** is amended to read:
633 **17-28-11. Temporary work -- Term or period.**
634 [~~The~~] (1) Subject to Subsection (2), the head of any county fire department coming
635 within the provisions of this act may with the advice and consent of the county legislative
636 body, appoint to any position or place of employment in [~~his~~] the fire department, any person
637 for temporary work without making [~~such~~] the appointment from the certified civil service list[~~,~~
638 ~~provided, however, such~~].
639 (2) An appointment [~~shall not~~] described in Subsection (1) may not be longer than one
640 month in the aggregate in the same calendar year.
641 Section 23. Section **17-30-8** is amended to read:
642 **17-30-8. Preservation and inspection of examination papers.**
643 All examination papers shall remain the property of the commission, and shall be
644 preserved until the expiration of the eligible register for the preparation of which an
645 examination is given. Examination papers [~~shall not be~~] are not open to public inspection
646 without court order, but an applicant may inspect [~~his~~] the applicant's own papers at any time
647 within 30 days after the mailing of notice of [~~his~~] the applicant's grade. The appointing

648 authority may inspect the papers of any eligible applicant certified for appointment.
649 Section 24. Section **17-30-22** is amended to read:
650 **17-30-22. Prohibitions against political activities -- Penalties.**
651 (1) Any employee of a governmental unit or member of a governing body, or
652 appointing authority, or peace officer who shall appoint, promote, transfer, demote, suspend,
653 discharge or change the amount of compensation of any merit system officer or seek, aid or
654 abet the appointment, promotion, transfer, demotion, suspension, discharge or change in the
655 amount of compensation of any merit system officer, or promise or threaten to do so, for
656 giving, withholding, or neglecting to make any contributions or any service for any political
657 purpose, or who solicits, directly or indirectly, any such contribution or service, from a merit
658 system officer, shall be guilty of a misdemeanor. This section [~~shall not be deemed to~~] does not
659 apply to political speeches or use of mass communications media for political purposes by
660 persons not merit system officers even though merit system officers may be present or within
661 the reach of such media unless the purpose and intent [~~thereof~~] is to violate this section with
662 direct respect to [~~such~~] those officers.
663 (2) No merit system officer may engage in any political activity during the hours of
664 employment, nor shall any person solicit political contributions from merit system officers
665 during hours of employment for political purposes; but nothing in this section shall preclude
666 voluntary contributions by a merit system officer to the party or candidate of the officer's
667 choice.
668 Section 25. Section **17-31-3** is amended to read:
669 **17-31-3. Reserve fund authorized -- Use of collected funds.**
670 The county legislative body may create a reserve fund and any funds collected but not
671 expended during any fiscal year [~~shall not~~] do not revert to the general fund of the governing
672 bodies but shall be retained in a special fund to be used in accordance with Sections 17-31-2
673 through 17-31-5.
674 Section 26. Section **17-33-10** is amended to read:
675 **17-33-10. Grievance and appeals procedure -- Employees' complaints of**
676 **discriminatory employment practice.**
677 (1) Any county to which the provisions of this act apply shall establish in its personnel
678 rules and regulations a grievance and appeals procedure. The procedure shall be used to

679 resolve disputes arising from grievances as defined in the rules and regulations, including [~~but~~
680 ~~not limited to~~] acts of discrimination. The procedure may also be used by employees in the
681 event of dismissal, demotion, suspension, or transfer.
682 (2) Any charge by a county career service employee of discriminatory or prohibited
683 employment practice as prohibited by Section 34A-5-106, can be filed with the Division of
684 Antidiscrimination and Labor within the Labor Commission. Complaints shall be filed within
685 30 days of the issuance of a written decision of the county career service council.
686 Section 27. Section **17-33-15** is amended to read:
687 **17-33-15. Duty of county legislative body to provide rules or regulations --**
688 **Conflicts with state or federal law.**
689 (1) It shall be the duty of the county legislative body to provide by rule or regulation
690 for the operation and functioning of any activity within the purpose and spirit of the act which
691 is necessary and expedient.
692 (2) If any provision of this act or the application thereof is found to be in conflict with
693 any state or federal law, conflict with which would impair funding otherwise receivable from
694 the state or federal government, the conflicting part is hereby declared to be inoperative solely
695 to the extent of the conflict and with respect to the department, agency, or institution of the
696 county directly affected, but such finding [~~shall not~~] does not affect the operation of the
697 remainder of this act in any of its applications.
698 (3) Notwithstanding any provision to the contrary, no rule or regulation shall be
699 adopted by the county legislative body which would deprive the county or any of its
700 departments, agencies, or institutions of state or federal grants or other forms of financial
701 assistance.
702 Section 28. Section **17-34-5** is amended to read:
703 **17-34-5. Budgeting, accounting for, and disbursing of funds -- Annual audit.**
704 (1) (a) With respect to the budgeting, accounting for, and disbursing of funds to furnish
705 the municipal-type services and functions described in Section 17-34-1 to areas of the county
706 outside the limits of incorporated towns and cities, including levying of taxes and imposition of
707 fees and charges under Section 17-34-3, each county legislative body shall separately budget
708 and strictly account for and apportion to the costs of providing municipal-type services and
709 functions the following:

710 (i) the salaries of each county commissioner and the salaries and wages of all other
711 elected and appointed county officials and employees;
712 (ii) the operation and maintenance costs of each municipal-type service or function
713 provided, set forth separately as line items in the Municipal Services Fund budget;
714 (iii) the cost of renting or otherwise using capital facilities for the purposes of
715 providing municipal-type services or functions; and
716 (iv) all other costs including[~~, but not limited to,~~] administrative costs associated,
717 directly or indirectly, with the costs of providing municipal-type services or functions.
718 (b) At all times these funds and any expenditures from these funds shall be separately
719 accounted for and utilized only for the purposes of providing municipal-type services and
720 functions to areas of the county outside the limits of incorporated towns or cities.
721 (2) To implement Subsection (1):
722 (a) a budget shall be adopted and administered in the same manner as the budget for
723 general purposes of the county which furnishes the municipal-type services and functions is
724 adopted and administered, either as a part of the general budget or separate from it;
725 (b) funds for the purposes of furnishing municipal-type services and functions under
726 this chapter shall be collected, held, and administered in the same manner as other funds of the
727 county are collected, held, and administered, but shall be segregated and separately maintained,
728 except that where, in the judgment of the county legislative body, advantages inure to the fund
729 from coinvestment of these funds and other funds also subject to control by the county
730 legislative body, the county legislative body may direct this coinvestment, but in no event may
731 the funds to furnish municipal-type services and functions or the income from their investment
732 be used for purposes other than those described in Section 17-34-1;
733 (c) expenditures shall be made in the same manner as other expenditures of the county
734 are made; and
735 (d) any taxes levied under this chapter shall be levied at the same time and in the same
736 manner as other taxes of the county are levied.
737 (3) An annual audit of the budgeting, accounting for, and disbursing of funds used to
738 furnish municipal-type services and functions, shall be conducted by an independent certified
739 public accountant.
740 Section 29. Section **17-35b-303** is amended to read:

741 **17-35b-303. Community council form of county government.**
742 (1) The structural form of county government known as the "community council" form
743 unites in a single consolidated city and county government the powers, duties, and functions
744 which, immediately prior to its effective date, are vested in the county, the largest city in the
745 county, such other cities and towns as elect to merge in it, and all special taxing districts, public
746 authorities, service areas, and other local public entities functioning within the boundaries of
747 the county, except school districts. The consolidated government shall have power to extend on
748 a countywide basis any governmental service or function which is authorized by law or which
749 the previous county, cities, and other local public agencies included therein were empowered to
750 provide for their residents, but no such service shall be provided within an incorporated
751 municipality which continues to provide that service for its own inhabitants, except upon a
752 contract basis for the municipality, and no taxes, assessments, fees, or other charges shall be
753 extended or collected within the municipality for the purpose of financing any service which is
754 not provided by the consolidated government within the municipality. "Largest city," as used in
755 this section, means a city or cities the population of which, as shown by the most recent
756 decennial or special census, exceeds 35% of the total county population.
757 (2) The incorporated cities and towns, other than the largest city, in the county shall
758 retain independent corporate existence and shall continue to provide local services to their
759 inhabitants of the type and to the extent provided in the plan, but any such city or town, by
760 majority vote of its qualified voters, cast either concurrently with the election at which the plan
761 is approved or subsequently to it, as provided by the governing body of the city or town, may
762 cause the city or town to be dissolved and its powers, duties, and functions vested in the
763 countywide government.
764 (3) The county legislative body of the countywide government shall be a council
765 composed of not less than five persons as specified in the plan, elected respectively from
766 communities, which collectively include all of the territory within the county, having
767 boundaries described in the plan embracing substantially equal populations. In addition to
768 other powers vested in the countywide government by law or pursuant to this act, the county
769 council shall have all of the legislative and policymaking powers which it is possible for the
770 governing body of a county or a city to possess and which are not expressly denied by the
771 constitution, by a general law applicable to all cities or all counties, or by a specific restriction

772 in the plan itself.
773 (4) The voters of each community shall elect a community council composed of the
774 community's elected member of the county council, who shall be chairman of the community
775 council, and not less than two nor more than four additional members elected either from
776 districts of substantially equal population within the community, or at large therein, as may be
777 provided in the plan. A community council shall have the power and duty, in conformity with
778 guidelines prescribed by the county council, to adopt policies and formulate specific programs
779 relating to and defining the kinds and levels of local governmental services necessary to satisfy
780 the needs and desires of the citizens within the community, but a community council shall have
781 no power to engage personnel or to acquire facilities, property, or equipment for the
782 administration or performance of such services. Authorized programs for local governmental
783 services which have been approved by a community council shall be submitted to the county
784 council for implementation and shall be carried into effect by the county council and county
785 executive unless, by a vote of not less than 3/4 of its entire membership, the county council
786 determines that a particular program, in whole or in part, should be rejected as contrary to the
787 general welfare of the county. A community council program for local governmental services
788 within a community:
789 (a) shall include a method or methods for financing such services;
790 (b) may provide for supplying of such services by contract or by joint or cooperative
791 action pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, in which case the
792 community council shall be considered a "public agency" within the meaning of said act; and
793 (c) may provide for supplying of such services through the creation of service areas
794 pursuant to Title 17B, Chapter 2a, Part 9, Service Area Act.
795 (5) Notwithstanding Subsection (4), in any community which includes, in whole or in
796 part, the territory of a city or town, no community council program for local government
797 services above the minimum level of area-wide services provided countywide may be
798 submitted to the county council for implementation unless it first is submitted to the governing
799 body of each such city or town for review. Within 30 days after such submission, the governing
800 body of the city or town:
801 (a) may file with the community council a written statement of its comments,
802 suggestions, and recommendations relating to the program, and the community council shall

803 give due consideration thereto; or
804 (b) may, by resolution or ordinance, provide that any designated part of the community
805 council program relating to a service to be provided within the city or town shall be submitted
806 to the voters thereof at a general or special election to be held therein within 60 days after the
807 date of the resolution or ordinance. Any part of the program submitted to the voters of a city or
808 town under this Subsection (5) [~~shall not~~] may not be included in the program as submitted to
809 the county council unless it receives an approving vote at such election by majority of all votes
810 cast on the question.
811 (6) Except as provided herein, the qualifications, mode of election, term of office,
812 method of removal, procedure to fill vacancies, compensation, and other appropriate provisions
813 relating to membership on the county council or community councils shall be provided in the
814 plan.
815 (7) Upon the effective date of the plan and as provided in it, all properties and assets,
816 whether tangible or intangible, and all obligations, debts, and liabilities, of those governmental
817 entities which are merged into the new countywide government shall become vested and
818 transferred by operation of law in and to the new countywide government. The properties,
819 assets, obligations, debts, and liabilities of any city or town not merged into the new
820 countywide government, so far as allocated, used, or incurred primarily to discharge a function
821 which under the plan will no longer be a responsibility of the city or town, shall likewise be
822 vested in and transferred to the new countywide government. All transfers under this
823 Subsection (7) shall be subject to equitable adjustments, conditions, and limitations provided in
824 the plan and determined by procedures specified in the plan, but the contractual rights of any
825 bondholder or creditor [~~shall not~~] may not be impaired.
826 (8) Upon the effective date of the plan and as provided in it, nonelective officers and
827 employees of governmental entities which are merged into the new countywide government
828 and such officers and employees of nonmerged cities or towns whose qualifications and duties
829 relate primarily to functions which under the plan will no longer be a responsibility of those
830 cities or towns, shall be blanketed in and transferred to the new countywide government as
831 officers and employees of it. Standards and procedures relating to such personnel transfers, and
832 for resolving disputes or grievances relating thereto, shall be provided in the plan.
833 Section 30. Section **17-35b-304** is amended to read:

834 **17-35b-304. Consolidated city and county -- Structural form.**
835 (1) The structural form of county government known as the "consolidated city and
836 county" form unites in a single consolidated city and county government the powers, duties,
837 and functions which, immediately prior to its effective date, are vested in the county, the largest
838 city in the county, such other cities and towns as elect to merge in it, and all special taxing
839 districts, public authorities, county service areas, and other local public entities functioning
840 within the boundaries of the county, except school districts. The consolidated government shall
841 with the consent of the continuing municipalities have power to extend on a countywide basis
842 any governmental service or function which is authorized by law or which the previous county,
843 cities, and other local public agencies included in them were empowered to provide for their
844 residents. No such service, however, shall be provided within an incorporated municipality
845 which continues to provide that such service for its own inhabitants, except upon a contract
846 basis for the municipality. No taxes, assessments, fees, or other charges shall be extended or
847 collected by the consolidated government within any municipality for the purpose of financing
848 any service which is not provided by the consolidated government within the municipality.
849 "Largest city," as used in this section, means a city or cities the population of which, as shown
850 by the most recent decennial or special census, exceeds 35% of the total county population.
851 (2) The incorporated cities and towns, other than the largest city in the county, shall
852 retain independent corporate existence and shall continue to provide local services to their
853 inhabitants of the type and to the extent provided in the plan; but any such city or town by
854 majority vote of its qualified voters cast either concurrently with the election at which the plan
855 is approved or subsequently to it, as provided by the governing body of the city or town, may
856 cause the city or town to be dissolved and its powers, duties, and functions vested in the
857 consolidated government.
858 (3) The governing body of the consolidated government shall be a council composed of
859 not less than five persons elected as specified in the plan. In addition to other powers vested in
860 the consolidated government by law or pursuant to this act, the county council shall have all the
861 legislative and policymaking powers which it is possible for the governing body of a county or
862 a city to possess and which are not expressly denied by the constitution, by general law
863 applicable to all cities or all counties, or by a specific restriction in the plan itself.
864 (4) Except as provided in this act, the qualifications, mode of election, term of office,

865 method of removal, procedure to fill vacancies, compensation, or other appropriate provisions
866 relating to membership on the county council shall be provided in the plan.
867 (5) Upon the effective date of the plan, as provided in it, all properties and assets,
868 whether tangible or intangible, and all obligations, debts, and liabilities of those governmental
869 entities which are merged into the consolidated government shall become vested and
870 transferred by operation of law in and to the consolidated government. The properties, assets,
871 obligations, debts, and liabilities of any city or town not merged into the consolidated
872 government, so far as allocated, used, or incurred primarily to discharge a function which under
873 the plan will no longer be a responsibility of the city or town, shall likewise be vested in and
874 transferred to the consolidated government. All transfers under this Subsection (5) shall be
875 subject to equitable adjustments, conditions, and limitations provided in the plan and
876 determined by procedures specified in the plan, but the contractual rights of any bondholder or
877 creditor [~~shall not~~] may not be impaired.
878 (6) Upon the effective date of the plan, and as provided in it, nonelective officers and
879 employees of the governmental entities which are merged into the consolidated government
880 and such officers and employees of nonmerged cities or towns whose qualifications and duties
881 relate primarily to functions which under the plan will no longer be a responsibility of those
882 cities or towns shall be blanketed in and transferred to the consolidated government as officers
883 and employees of it. Standards and procedures relating to such personnel transfers and for
884 resolving disputes or grievances relating to them shall be provided in the plan.
885 Section 31. Section **17-36-10** is amended to read:
886 **17-36-10. Preparation of tentative budget.**
887 (1) On or before the first day of the next to last month of every fiscal period, the budget
888 officer shall prepare for the next budget period and file with the governing body a tentative
889 budget for each fund for which a budget is required.
890 (2) The tentative budget shall set forth in tabular form:
891 (a) actual revenues and expenditures in the last completed fiscal period;
892 (b) estimated total revenues and expenditures for the current fiscal period;
893 (c) the estimated available revenues and expenditures for the ensuing budget period
894 computed by determining:
895 (i) the estimated expenditure for each fund after review of each departmental budget

896 request;
897 (ii) (A) the total revenue requirements of the fund;
898 (B) the part of the total revenue that will be derived from revenue sources other than
899 property tax; and
900 (C) the part of the total revenue that [~~must~~] shall be derived from property taxes; and
901 (d) if required by the governing body, actual performance experience to the extent
902 available in work units, unit costs, man hours, and man years for each budgeted fund that
903 includes an appropriation for salaries or wages for the last completed fiscal period and the first
904 eight months of the current fiscal period if the county is on an annual fiscal period, or the first
905 20 months of the current fiscal period if the county is on a biennial fiscal period, together with
906 the total estimated performance data of like character for the current fiscal period and for the
907 ensuing budget period.
908 (3) The budget officer may recommend modification of any departmental budget
909 request under Subsection (2)(c)(i) before it is filed with the governing body, if each department
910 head has been given an opportunity to be heard concerning the modification.
911 (4) Each tentative budget shall contain the estimates of expenditures submitted by any
912 department together with specific work programs and other supportive data as the governing
913 body requests. The tentative budget shall be accompanied by a supplementary estimate of all
914 capital projects or planned capital projects within the budget period and within the next three
915 succeeding years.
916 (5) (a) Each tentative budget submitted in a county with a population in excess of
917 25,000 determined pursuant to Section 17-36-4 shall be accompanied by a budget message in
918 explanation of the budget.
919 (b) The budget message shall contain an outline of the proposed financial policies of
920 the county for the budget period and describe the important features of the budgetary plan. It
921 shall also state the reasons for changes from the previous fiscal period in appropriation and
922 revenue items and explain any major changes in financial policy.
923 (c) A budget message for counties with a population of less than 25,000 is
924 recommended but not incumbent upon the budget officer.
925 (6) The tentative budget shall be reviewed, considered, and tentatively adopted by the
926 governing body in a regular or special meeting called for that purpose. It may thereafter be

927 amended or revised by the governing body prior to public hearings thereon, except that no
928 appropriation required for debt retirement and interest or reduction, pursuant to Section
929 17-36-17, of any deficits which exist may be reduced below the required minimum.
930 Section 32. Section **17-36-17** is amended to read:
931 **17-36-17. Appropriations in final budget -- Limitations.**
932 (1) The governing body of a county [~~shall not~~] may not make any appropriation in the
933 final budget of any fund in excess of the estimated expendable revenue of the fund for the
934 budget period.
935 (2) There shall be included as an item of appropriation in the budget of each fund for
936 any fiscal period any existing deficit as of the close of the last completed fiscal period to the
937 extent of at least 5% of the total revenue of the fund in the last completed fiscal period or if the
938 deficit is less than 5% of the total revenue, an amount equal to the deficit.
939 Section 33. Section **17-37-4** is amended to read:
940 **17-37-4. Delegation of management and control authority to directors by county**
941 **executive body -- Contract or lease with private entity for management -- Deposit of**
942 **money collected -- Expenditures -- Recommendations by directors to county executive**
943 **body.**
944 (1) Upon the appointment of a planetarium board of directors, the county executive
945 may delegate to the board of directors the authority to manage and control the functions,
946 activities, operations, maintenance, and repair of any county planetarium, and shall include in
947 its delegation the authority to approve and control all expenditures from the county planetarium
948 fund. Any delegation of authority made to the board of directors under this section shall at all
949 times be subject to the ultimate authority and responsibility of the county executive for the
950 management and control of all county funds and properties as conferred upon that board by
951 general law applicable to counties.
952 (2) (a) Upon the recommendation of the board of directors, the county may enter into a
953 contract or lease agreement with a private organization or entity for partial or full management,
954 operation and maintenance of any county planetarium and for other planetarium services,
955 which may include providing the physical facilities and equipment for the operation of a
956 planetarium.
957 (b) A contract or lease for [~~such~~] the purposes [~~shall not~~] described in Subsection (2)(a)

958 may not extend for more than a four-year period and shall be subject to annual review by the
959 board of directors to determine if performance is in conformance with the terms of the contract
960 or lease and to establish the level of the subsequent funding pursuant to the contract or lease.
961 (3) All money collected from a county planetarium tax levy shall be deposited in the
962 county treasury to the credit of the county planetarium fund. All money collected from
963 operations of or from donations to any planetarium owned and operated by the county shall
964 also be deposited in the county treasury to the credit of the planetarium fund. Any money
965 collected from operations of a planetarium by a contracting party or lessee shall be used or
966 deposited as the contract or lease may provide. Income or proceeds from any investment by the
967 county treasurer of county planetarium funds shall be credited to the county planetarium fund
968 and used only for planetarium purposes.
969 (4) Expenditures from the county planetarium fund shall be drawn upon by the
970 authorized officers of the county upon presentation of properly authenticated vouchers or
971 documentation of the board of directors or other appropriate planetarium official. The fund
972 [~~shall not~~] may not be used for any purpose other than to pay the costs of acquiring,
973 constructing, operating, managing, equipping, furnishing, maintaining or repairing a
974 planetarium, including appropriate, reasonable and proportionate costs allocated by the county
975 for support of the planetarium, or to pay the cost of financing and funding a contract or lease
976 agreement for facilities, equipment, management, operation, and maintenance of a planetarium.
977 (5) The board of directors shall provide recommendations to the county executive with
978 respect to the purchase, lease, exchange, construction, erection, or other acquisition of land,
979 real property improvements, and fixtures or the sale, lease, exchange, or other disposition of
980 land, real property improvements, and fixtures for the use or benefit of a county planetarium.
981 Section 34. Section **17-38-4** is amended to read:
982 **17-38-4. Nontermination of taxing power.**
983 The power to levy a tax as provided in Section 17-38-1 [~~shall~~] does not terminate on
984 June 30, 1983.
985 Section 35. Section **17-41-301** is amended to read:
986 **17-41-301. Proposal for creation of agriculture protection area or industrial**
987 **protection area.**
988 (1) (a) A proposal to create an agriculture protection area or an industrial protection

989 area may be filed with:
990 (i) the legislative body of the county in which the area is located, if the area is within
991 the unincorporated part of a county; or
992 (ii) the legislative body of the city or town in which the area is located, if the area is
993 within a city or town.
994 (b) (i) To be accepted for processing by the applicable legislative body, a proposal
995 under Subsection (1)(a) shall be signed by a majority in number of all owners of real property
996 and the owners of a majority of the land area in agricultural production or industrial use within
997 the proposed agriculture protection area or industrial protection area, respectively.
998 (ii) For purposes of Subsection (1)(b)(i), the owners of real property shall be
999 determined by the records of the county recorder.
1000 (2) The proposal shall identify:
1001 (a) the boundaries of the land proposed to become part of an agriculture protection area
1002 or industrial protection area;
1003 (b) any limits on the types of agriculture production or industrial use to be allowed
1004 within the agriculture protection area or industrial protection area, respectively; and
1005 (c) for each parcel of land:
1006 (i) the names of the owners of record of the land proposed to be included within the
1007 agriculture protection area or industrial protection area;
1008 (ii) the tax parcel number or account number identifying each parcel; and
1009 (iii) the number of acres of each parcel.
1010 (3) An agriculture protection area or industrial protection area may include within its
1011 boundaries land used for a roadway, dwelling site, park, or other nonagricultural or, in the case
1012 of an industrial protection area, nonindustrial use if that land constitutes a minority of the total
1013 acreage within the agriculture protection area or industrial protection area, respectively.
1014 (4) A county or municipal legislative body may establish:
1015 (a) the manner and form for submission of proposals; and
1016 (b) reasonable fees for accepting and processing the proposal.
1017 (5) Each county and municipal legislative body shall establish the minimum number of
1018 continuous acres that [~~must~~] shall be included in an agriculture protection area or industrial
1019 protection area.

1020 Section 36. Section **17-41-401** is amended to read:
1021 **17-41-401. Farmland Assessment Act benefits not affected.**
1022 (1) Creation of an agriculture protection area [~~shall not~~] may not impair the ability of
1023 land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment
1024 Act.
1025 (2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland
1026 Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding
1027 the land's location within an agriculture protection area.
1028 Section 37. Section **17-52-401** is amended to read:
1029 **17-52-401. Contents of proposed optional plan.**
1030 (1) Each optional plan proposed under this chapter:
1031 (a) shall propose the adoption of one of the forms of county government listed in
1032 Subsection 17-52-402(1)(a);
1033 (b) shall contain detailed provisions relating to the transition from the existing form of
1034 county government to the form proposed in the optional plan, including provisions relating to
1035 the:
1036 (i) election or appointment of officers specified in the optional plan for the new form of
1037 county government;
1038 (ii) retention, elimination, or combining of existing offices and, if an office is
1039 eliminated, the division or department of county government responsible for performing the
1040 duties of the eliminated office;
1041 (iii) continuity of existing ordinances and regulations;
1042 (iv) continuation of pending legislative, administrative, or judicial proceedings;
1043 (v) making of interim and temporary appointments; and
1044 (vi) preparation, approval, and adjustment of necessary budget appropriations;
1045 (c) shall specify the date it is to become effective if adopted, which [~~shall not~~] may not
1046 be earlier than the first day of January next following the election of officers under the new
1047 plan; and
1048 (d) notwithstanding any other provision of this title and except with respect to an
1049 optional plan that proposes the adoption of the county commission or expanded county
1050 commission form of government, with respect to the county budget:

1051 (i) may provide that the county auditor's role is to be the budget officer, to project
1052 county revenues, and to prepare a tentative budget to present to the county executive; and
1053 (ii) shall provide that the county executive's role is to prepare and present a proposed
1054 budget to the county legislative body, and the county legislative body's role is to adopt a final
1055 budget.
1056 (2) Subject to Subsection (3), an optional plan may include provisions that are
1057 considered necessary or advisable to the effective operation of the proposed optional plan.
1058 (3) An optional plan may not include any provision that is inconsistent with or
1059 prohibited by the Utah Constitution or any statute.
1060 (4) Each optional plan proposing to change the form of government to a form under
1061 Section 17-52-504 or 17-52-505 shall:
1062 (a) provide for the same executive and legislative officers as are specified in the
1063 applicable section for the form of government being proposed by the optional plan;
1064 (b) provide for the election of the county council;
1065 (c) specify the number of county council members, which shall be an odd number from
1066 three to nine;
1067 (d) specify whether the members of the county council are to be elected from districts,
1068 at large, or by a combination of at large and by district;
1069 (e) specify county council members' qualifications and terms and whether the terms are
1070 to be staggered;
1071 (f) contain procedures for filling vacancies on the county council, consistent with the
1072 provisions of Section 20A-1-508; and
1073 (g) state the initial compensation, if any, of county council members and procedures for
1074 prescribing and changing compensation.
1075 (5) Each optional plan proposing to change the form of government to the county
1076 commission form under Section 17-52-501 or the expanded county commission form under
1077 Section 17-52-502 shall specify:
1078 (a) (i) for the county commission form of government, that the county commission
1079 shall have three members; or
1080 (ii) for the expanded county commission form of government, whether the county
1081 commission shall have five or seven members;

1082 (b) the terms of office for county commission members and whether the terms are to be
1083 staggered;
1084 (c) whether members of the county commission are to be elected from districts, at
1085 large, or by a combination of at large and from districts; and
1086 (d) if any members of the county commission are to be elected from districts, the
1087 district residency requirements for those commission members.
1088 Section 38. Section **17-53-209** is amended to read:
1089 **17-53-209. Records to be kept.**
1090 The legislative body of each county shall cause to be kept:
1091 (1) a minute record, in which [~~must~~] shall be recorded all orders and decisions made by
1092 the county legislative body and the daily proceedings had at all regular and special meetings;
1093 (2) an allowance record, in which [~~must~~] shall be recorded all orders for the allowance
1094 of money from the county treasury, to whom made and on what account, dating, numbering,
1095 and indexing the same through each year;
1096 (3) a road record, containing all proceedings and adjudications relating to the
1097 establishment, maintenance, charge, and discontinuance of roads and road districts, and all
1098 contracts and other matters pertaining thereto;
1099 (4) a franchise record, containing all franchises granted by the board, for what purpose,
1100 the length of time, and to whom granted, the amount of bond and license tax required or other
1101 consideration to be paid;
1102 (5) an ordinance record, in which [~~must~~] shall be entered all ordinances or laws duly
1103 passed by the county legislative body; and
1104 (6) a warrant record, to be kept by the county auditor, in which [~~must~~] shall be entered
1105 in the order of drawing all warrants drawn on the treasurer, with their number and reference to
1106 the order on the minute record, with date, amount, on what account, and the name of the payee.
1107 Section 39. Section **17-53-311** is amended to read:
1108 **17-53-311. Contracting for management, maintenance, operation, or construction**
1109 **of jails.**
1110 (1) (a) With the approval of the sheriff, a county executive may contract with private
1111 contractors for management, maintenance, operation, and construction of county jails.
1112 (b) A county executive may include a provision in the contract that allows use of a

1113 building authority created under the provisions of Title 17D, Chapter 2, Local Building
1114 Authority Act, to construct or acquire a jail facility.
1115 (c) A county executive may include a provision in the contract that requires that any
1116 jail facility meet any federal, state, or local standards for the construction of jails.
1117 (2) If a county executive contracts only for the management, maintenance, or operation
1118 of a jail, the county executive shall include provisions in the contract that:
1119 (a) require the private contractor to post a performance bond in the amount set by the
1120 county legislative body;
1121 (b) establish training standards that [~~must~~] shall be met by jail personnel;
1122 (c) require the private contractor to provide and fund training for jail personnel so that
1123 the personnel meet the standards established in the contract and any other federal, state, or local
1124 standards for the operation of jails and the treatment of jail prisoners;
1125 (d) require the private contractor to indemnify the county for errors, omissions,
1126 defalcations, and other activities committed by the private contractor that result in liability to
1127 the county;
1128 (e) require the private contractor to show evidence of liability insurance protecting the
1129 county and its officers, employees, and agents from liability arising from the construction,
1130 operation, or maintenance of the jail, in an amount not less than those specified in Title 63G,
1131 Chapter 7, Governmental Immunity Act of Utah;
1132 (f) require the private contractor to:
1133 (i) receive all prisoners committed to the jail by competent authority; and
1134 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed
1135 by the governing body; and
1136 (g) prohibit the use of inmates by the private contractor for private business purposes
1137 of any kind.
1138 (3) A contractual provision requiring the private contractor to maintain liability
1139 insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,
1140 Governmental Immunity Act of Utah, may not be construed as waiving the limitation on
1141 damages recoverable from a governmental entity or its employees established by that chapter.
1142 Section 40. Section **17B-1-304** is amended to read:
1143 **17B-1-304. Appointment procedures for appointed members.**

1144 (1) The appointing authority may, by resolution, appoint persons to serve as members
1145 of a local district board by following the procedures established by this section.
1146 (2) (a) In any calendar year when appointment of a new local district board member is
1147 required, the appointing authority shall prepare a notice of vacancy that contains:
1148 (i) the positions that are vacant that [~~must~~] shall be filled by appointment;
1149 (ii) the qualifications required to be appointed to those positions;
1150 (iii) the procedures for appointment that the governing body will follow in making
1151 those appointments; and
1152 (iv) the person to be contacted and any deadlines that a person [~~must~~] shall meet who
1153 wishes to be considered for appointment to those positions.
1154 (b) The appointing authority shall:
1155 (i) post the notice of vacancy in four public places within the local district at least one
1156 month before the deadline for accepting nominees for appointment; and
1157 (ii) (A) publish the notice of vacancy:
1158 (I) in a daily newspaper of general circulation within the local district for five
1159 consecutive days before the deadline for accepting nominees for appointment; or
1160 (II) in a local weekly newspaper circulated within the local district in the week before
1161 the deadline for accepting nominees for appointment; and
1162 (B) in accordance with Section 45-1-101 for five days before the deadline for accepting
1163 nominees for appointment.
1164 (c) The appointing authority may bill the local district for the cost of preparing,
1165 printing, and publishing the notice.
1166 (3) (a) Not sooner than two months after the appointing authority is notified of the
1167 vacancy, the appointing authority shall select a person to fill the vacancy from the applicants
1168 who meet the qualifications established by law.
1169 (b) The appointing authority shall:
1170 (i) comply with Title 52, Chapter 4, Open and Public Meetings Act, in making the
1171 appointment;
1172 (ii) allow any interested persons to be heard; and
1173 (iii) adopt a resolution appointing a person to the local district board.
1174 (c) If no candidate for appointment to fill the vacancy receives a majority vote of the

1175 appointing authority, the appointing authority shall select the appointee from the two top
1176 candidates by lot.
1177 (4) Persons appointed to serve as members of the local district board serve four-year
1178 terms, but may be removed for cause at any time after a hearing by 2/3 vote of the appointing
1179 body.
1180 (5) At the end of each board member's term, the position is considered vacant and the
1181 appointing authority may either reappoint the old board member or appoint a new member after
1182 following the appointment procedures established in this section.
1183 (6) Notwithstanding any other provision of this section, if the appointing authority
1184 appoints one of its own members, it need not comply with the provisions of this section.
1185 Section 41. Section **17B-1-506** is amended to read:
1186 **17B-1-506. Withdrawal petition requirements.**
1187 (1) Each petition under Section 17B-1-504 shall:
1188 (a) indicate the typed or printed name and current address of each owner of acre-feet of
1189 water, property owner, registered voter, or authorized representative of the governing body
1190 signing the petition;
1191 (b) separately group signatures by municipality and, in the case of unincorporated
1192 areas, by county;
1193 (c) if it is a petition signed by the owners of land, the assessment of which is based on
1194 acre-feet of water, indicate the address of the property and the property tax identification parcel
1195 number of the property as to which the owner is signing the request;
1196 (d) designate up to three signers of the petition as sponsors, or in the case of a petition
1197 filed under Subsection 17B-1-504(1)(a)(iv), designate a governmental representative as a
1198 sponsor, and in each case, designate one sponsor as the contact sponsor with the mailing
1199 address and telephone number of each;
1200 (e) state the reasons for withdrawal; and
1201 (f) when the petition is filed with the local district board of trustees, be accompanied by
1202 a map generally depicting the boundaries of the area proposed to be withdrawn and a legal
1203 description of the area proposed to be withdrawn.
1204 (2) (a) The local district may prepare an itemized list of expenses, other than attorney
1205 expenses, that will necessarily be incurred by the local district in the withdrawal proceeding.

1206 The itemized list of expenses may be submitted to the contact sponsor. If the list of expenses is
1207 submitted to the contact sponsor within 21 days after receipt of the petition, the contact sponsor
1208 on behalf of the petitioners shall be required to pay the expenses to the local district within 90
1209 days of receipt. Until funds to cover the expenses are delivered to the local district, the district
1210 will have no obligation to proceed with the withdrawal and the time limits on the district stated
1211 in this part will be tolled. If the expenses are not paid within the 90 days, or within 90 days
1212 from the conclusion of any arbitration under Subsection (2)(b), the petition requesting the
1213 withdrawal shall be considered to have been withdrawn.
1214 (b) If there is no agreement between the board of trustees of the local district and the
1215 contact sponsor on the amount of expenses that will necessarily be incurred by the local district
1216 in the withdrawal proceeding, either the board of trustees or the contact sponsor may submit
1217 the matter to binding arbitration in accordance with Title 78B, Chapter 6, Part 2, Alternative
1218 Dispute Resolution Act; provided that, if the parties cannot agree upon an arbitrator and the
1219 rules and procedures that will control the arbitration, either party may pursue arbitration under
1220 Title 78B, Chapter 11, Utah Uniform Arbitration Act.
1221 (3) A signer of a petition may withdraw or, once withdrawn, reinstate the signer's
1222 signature at any time before the public hearing under Section 17B-1-508 by submitting a
1223 written withdrawal or reinstatement with the board of trustees of the local district in which the
1224 area proposed to be withdrawn is located.
1225 (4) If it reasonably appears that, if the withdrawal which is the subject of a petition
1226 filed under Subsection 17B-1-504(1)(a)(i) or (ii) is granted, it will be necessary for a
1227 municipality to provide to the withdrawn area the service previously supplied by the local
1228 district, the board of trustees of the local district may, within 21 days after receiving the
1229 petition, notify the contact sponsor in writing that, before it will be considered by the board of
1230 trustees, the petition [~~must~~] shall be presented to and approved by the governing body of the
1231 municipality as provided in Subsection 17B-1-504(1)(a)(iv) before it will be considered by the
1232 local district board of trustees. If the notice is timely given to the contact sponsor, the petition
1233 shall be considered to have been withdrawn until the municipality files a petition with the local
1234 district under Subsection 17B-1-504(1)(a)(iv).
1235 (5) (a) After receiving the notice required by Subsection 17B-1-504(2), unless
1236 specifically allowed by law, a public entity may not make expenditures from public funds to

1237 support or oppose the gathering of signatures on a petition for withdrawal.
1238 (b) Nothing in this section prohibits a public entity from providing factual information
1239 and analysis regarding a withdrawal petition to the public, so long as the information grants
1240 equal access to both the opponents and proponents of the petition for withdrawal.
1241 (c) Nothing in this section prohibits a public official from speaking, campaigning,
1242 contributing personal money, or otherwise exercising the public official's constitutional rights.
1243 Section 42. Section **17B-1-510** is amended to read:
1244 **17B-1-510. Resolution approving or rejecting withdrawal -- Criteria for approval**
1245 **or rejection -- Terms and conditions.**
1246 (1) (a) On or before the date of the board meeting next following the public hearing
1247 under Section 17B-1-508, but in no case later than 90 days after the public hearing or, if no
1248 hearing is held, within 90 days after the filing of a petition under Section 17B-1-504, the board
1249 of trustees of the local district in which the area proposed to be withdrawn is located shall
1250 adopt a resolution:
1251 (i) approving the withdrawal of some or all of the area from the local district; or
1252 (ii) rejecting the withdrawal.
1253 (b) Each resolution approving a withdrawal shall:
1254 (i) include a legal description of the area proposed to be withdrawn;
1255 (ii) state the effective date of the withdrawal; and
1256 (iii) set forth the terms and conditions under Subsection (5), if any, of the withdrawal.
1257 (c) Each resolution rejecting a withdrawal shall include a detailed explanation of the
1258 board of trustees' reasons for the rejection.
1259 (2) Unless denial of the petition is required under Subsection (3), the board of trustees
1260 shall adopt a resolution approving the withdrawal of some or all of the area from the local
1261 district if the board of trustees determines that:
1262 (a) the area to be withdrawn does not and will not require the service that the local
1263 district provides;
1264 (b) the local district will not be able to provide service to the area to be withdrawn for
1265 the reasonably foreseeable future; or
1266 (c) the area to be withdrawn has obtained the same service that is provided by the local
1267 district or a commitment to provide the same service that is provided by the local district from

1268 another source.
1269 (3) The board of trustees shall adopt a resolution denying the withdrawal if it
1270 determines that the proposed withdrawal would:
1271 (a) result in a breach or default by the local district under:
1272 (i) any of its notes, bonds, or other debt or revenue obligations;
1273 (ii) any of its agreements with entities which have insured, guaranteed, or otherwise
1274 credit-enhanced any debt or revenue obligations of the local district; or
1275 (iii) any of its agreements with the United States or any agency of the United States;
1276 provided, however, that, if the local district has entered into an agreement with the United
1277 States that requires the consent of the United States for a withdrawal of territory from the
1278 district, a withdrawal under this part may occur if the written consent of the United States is
1279 obtained and filed with the board of trustees;
1280 (b) adversely affect the ability of the local district to make any payments or perform
1281 any other material obligations under:
1282 (i) any of its agreements with the United States or any agency of the United States;
1283 (ii) any of its notes, bonds, or other debt or revenue obligations; or
1284 (iii) any of its agreements with entities which have insured, guaranteed, or otherwise
1285 credit-enhanced any debt or revenue obligations of the local district;
1286 (c) result in the reduction or withdrawal of any rating on an outstanding note, bond, or
1287 other debt or revenue obligation of the local district;
1288 (d) create an island or peninsula of nondistrict territory within the local district or of
1289 district territory within nondistrict territory that has a material adverse affect on the local
1290 district's ability to provide service or materially increases the cost of providing service to the
1291 remainder of the local district;
1292 (e) materially impair the operations of the remaining local district; or
1293 (f) require the local district to materially increase the fees it charges or property taxes
1294 or other taxes it levies in order to provide to the remainder of the district the same level and
1295 quality of service that was provided before the withdrawal.
1296 (4) In determining whether the withdrawal would have any of the results described in
1297 Subsection (3), the board of trustees may consider the cumulative impact that multiple
1298 withdrawals over a specified period of time would have on the local district.

1299 (5) (a) Despite the presence of one or more of the conditions listed in Subsection (3),
1300 the board of trustees may approve a resolution withdrawing an area from the local district
1301 imposing terms or conditions that mitigate or eliminate the conditions listed in Subsection (3),
1302 including:
1303 (i) a requirement that the owners of property located within the area proposed to be
1304 withdrawn or residents within that area pay their proportionate share of any outstanding district
1305 bond or other obligation as determined pursuant to Subsection (5)(b);
1306 (ii) a requirement that the owners of property located within the area proposed to be
1307 withdrawn or residents within that area make one or more payments in lieu of taxes, fees, or
1308 assessments;
1309 (iii) a requirement that the board of trustees and the receiving entity agree to reasonable
1310 payment and other terms in accordance with Subsections (5)(f) through (g) regarding the
1311 transfer to the receiving entity of district assets that the district used before withdrawal to
1312 provide service to the withdrawn area but no longer needs because of the withdrawal; provided
1313 that, if those district assets are allocated in accordance with Subsections (5)(f) through (g), the
1314 district shall immediately transfer to the receiving entity on the effective date of the
1315 withdrawal, all title to and possession of district assets allocated to the receiving entity; or
1316 (iv) any other reasonable requirement considered to be necessary by the board of
1317 trustees.
1318 (b) Other than as provided for in Subsection 17B-1-511(2), and except as provided in
1319 Subsection (5)(e), in determining the proportionate share of outstanding bonded indebtedness
1320 or other obligations under Subsection (5)(a)(i) and for purposes of determining the allocation
1321 and transfer of district assets under Subsection (5)(a)(iii), the board of trustees and the
1322 receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the
1323 petition shall:
1324 (i) engage engineering and accounting consultants chosen by the procedure provided in
1325 Subsection (5)(d); provided however, that if the withdrawn area is not receiving service, an
1326 engineering consultant need not be engaged; and
1327 (ii) require the engineering and accounting consultants engaged under Subsection
1328 (5)(b)(i) to communicate in writing to the board of trustees and the receiving entity, or in cases
1329 where there is no receiving entity, the board and the sponsors of the petition the information

1330 required by Subsections (5)(f) through (h).
1331 (c) For purposes of this Subsection (5):
1332 (i) "accounting consultant" means a certified public accountant or a firm of certified
1333 public accountants with the expertise necessary to make the determinations required under
1334 Subsection (5)(h); and
1335 (ii) "engineering consultant" means a person or firm that has the expertise in the
1336 engineering aspects of the type of system by which the withdrawn area is receiving service that
1337 is necessary to make the determination required under Subsections (5)(f) and (g).
1338 (d) (i) Unless the board of trustees and the receiving entity, or in cases where there is
1339 no receiving entity, the board and the sponsors of the petition agree on an engineering
1340 consultant and an accounting consultant, each consultant shall be chosen from a list of
1341 consultants provided by the Consulting Engineers Council of Utah and the Utah Association of
1342 Certified Public Accountants, respectively, as provided in this Subsection (5)(d).
1343 (ii) A list under Subsection (5)(d)(i) may not include a consultant who has had a
1344 contract for services with the district or the receiving entity during the two-year period
1345 immediately before the list is provided to the local district.
1346 (iii) Within 20 days of receiving the lists described in Subsection (5)(d)(i), the board of
1347 trustees shall eliminate the name of one engineering consultant from the list of engineering
1348 consultants and the name of one accounting consultant from the list of accounting consultants
1349 and shall notify the receiving entity, or in cases where there is no receiving entity, the sponsors
1350 of the petition in writing of the eliminations.
1351 (iv) Within three days of receiving notification under Subsection (5)(d), the receiving
1352 entity, or in cases where there is no receiving entity, the sponsors of the petition shall eliminate
1353 another name of an engineering consultant from the list of engineering consultants and another
1354 name of an accounting consultant from the list of accounting consultants and shall notify the
1355 board of trustees in writing of the eliminations.
1356 (v) The board of trustees and the receiving entity, or in cases where there is no
1357 receiving entity, the board and the sponsors of the petition shall continue to alternate between
1358 them, each eliminating the name of one engineering consultant from the list of engineering
1359 consultants and the name of one accounting consultant from the list of accounting consultants
1360 and providing written notification of the eliminations within three days of receiving

1361 notification of the previous notification, until the name of only one engineering consultant
1362 remains on the list of engineering consultants and the name of only one accounting consultant
1363 remains on the list of accounting consultants.
1364 (e) The requirement under Subsection (5)(b) to engage engineering and accounting
1365 consultants does not apply if the board of trustees and the receiving entity, or in cases where
1366 there is no receiving entity, the board and the sponsors of the petition agree on the allocations
1367 that are the engineering consultant's responsibility under Subsection (5)(f) or the
1368 determinations that are the accounting consultant's responsibility under Subsection (5)(h);
1369 provided however, that if engineering and accounting consultants are engaged, the district and
1370 the receiving entity, or in cases where there is no receiving entity, the district and the sponsors
1371 of the petition shall equally share the cost of the engineering and accounting consultants.
1372 (f) (i) The engineering consultant shall allocate the district assets between the district
1373 and the receiving entity as provided in this Subsection (5)(f).
1374 (ii) The engineering consultant shall allocate:
1375 (A) to the district those assets reasonably needed by the district to provide to the area
1376 of the district remaining after withdrawal the kind, level, and quality of service that was
1377 provided before withdrawal; and
1378 (B) to the receiving entity those assets reasonably needed by the receiving entity to
1379 provide to the withdrawn area the kind and quality of service that was provided before
1380 withdrawal.
1381 (iii) If the engineering consultant determines that both the local district and the
1382 receiving entity reasonably need a district asset to provide to their respective areas the kind and
1383 quality of service provided before withdrawal, the engineering consultant shall:
1384 (A) allocate the asset between the local district and the receiving entity according to
1385 their relative needs, if the asset is reasonably susceptible of division; or
1386 (B) allocate the asset to the local district, if the asset is not reasonably susceptible of
1387 division.
1388 (g) All district assets remaining after application of Subsection (5)(f) shall be allocated
1389 to the local district.
1390 (h) (i) The accounting consultant shall determine the withdrawn area's proportionate
1391 share of any redemption premium and the principal of and interest on:

1392 (A) the local district's revenue bonds that were outstanding at the time the petition was
1393 filed;
1394 (B) the local district's general obligation bonds that were outstanding at the time the
1395 petition was filed; and
1396 (C) the local district's general obligation bonds that:
1397 (I) were outstanding at the time the petition was filed; and
1398 (II) are treated as revenue bonds under Subsection (5)(i); and
1399 (D) the district's bonds that were issued prior to the date the petition was filed to refund
1400 the district's revenue bonds, general obligation bonds, or general obligation bonds treated as
1401 revenue bonds.
1402 (ii) For purposes of Subsection (5)(h)(i), the withdrawn area's proportionate share of
1403 redemption premium, principal, and interest shall be the amount that bears the same
1404 relationship to the total redemption premium, principal, and interest for the entire district that
1405 the average annual gross revenues from the withdrawn area during the three most recent
1406 complete fiscal years before the filing of the petition bears to the average annual gross revenues
1407 from the entire district for the same period.
1408 (i) For purposes of Subsection (5)(h)(i), a district general obligation bond shall be
1409 treated as a revenue bond if:
1410 (i) the bond is outstanding on the date the petition was filed; and
1411 (ii) the principal of and interest on the bond, as of the date the petition was filed, had
1412 been paid entirely from local district revenues and not from a levy of ad valorem tax.
1413 (j) (i) Before the board of trustees of the local district files a resolution approving a
1414 withdrawal, the receiving entity, or in cases where there is no receiving entity, the sponsors of
1415 the petition shall irrevocably deposit government obligations, as defined in Subsection
1416 11-27-2(6), into an escrow trust fund the principal of and interest on which are sufficient to
1417 provide for the timely payment of the amount determined by the accounting consultant under
1418 Subsection (5)(h) or in an amount mutually agreeable to the board of trustees of the local
1419 district and the receiving entity, or in cases where there is no receiving entity, the board and the
1420 sponsors of the petition. Notwithstanding Subsection 17B-1-512(1), the board of trustees
1421 [~~shall not~~] may not be required to file a resolution approving a withdrawal until the
1422 requirements for establishing and funding an escrow trust fund in this Subsection (5)(j)(i) have

1423 been met; provided that, if the escrow trust fund has not been established and funded within
1424 180 days after the board of trustees passes a resolution approving a withdrawal, the resolution
1425 approving the withdrawal shall be void.
1426 (ii) Concurrently with the creation of the escrow, the receiving entity, or in cases where
1427 there is no receiving entity, the sponsors of the petition shall provide to the board of trustees of
1428 the local district:
1429 (A) a written opinion of an attorney experienced in the tax-exempt status of municipal
1430 bonds stating that the establishment and use of the escrow to pay the proportionate share of the
1431 district's outstanding revenue bonds and general obligation bonds that are treated as revenue
1432 bonds will not adversely affect the tax-exempt status of the bonds; and
1433 (B) a written opinion of an independent certified public accountant verifying that the
1434 principal of and interest on the deposited government obligations are sufficient to provide for
1435 the payment of the withdrawn area's proportionate share of the bonds as provided in Subsection
1436 (5)(h).
1437 (iii) The receiving entity, or in cases where there is no receiving entity, the sponsors of
1438 the petition shall bear all expenses of the escrow and the redemption of the bonds.
1439 (iv) The receiving entity may issue bonds under Title 11, Chapter 14, Local
1440 Government Bonding Act, and Title 11, Chapter 27, Utah Refunding Bond Act, to fund the
1441 escrow.
1442 (6) A requirement imposed by the board of trustees as a condition to withdrawal under
1443 Subsection (5) shall, in addition to being expressed in the resolution, be reduced to a duly
1444 authorized and executed written agreement between the parties to the withdrawal.
1445 (7) An area that is the subject of a withdrawal petition under Section 17B-1-504 that
1446 results in a board of trustees resolution denying the proposed withdrawal may not be the
1447 subject of another withdrawal petition under Section 17B-1-504 for two years after the date of
1448 the board of trustees resolution denying the withdrawal.
1449 Section 43. Section **17B-1-512** is amended to read:
1450 **17B-1-512. Filing of notice and plat -- Recording requirements -- Contest period**
1451 **-- Judicial review.**
1452 (1) (a) Within the time specified in Subsection (1)(b), the board of trustees shall file
1453 with the lieutenant governor:

1454 (i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5,
1455 that meets the requirements of Subsection 67-1a-6.5(3); and
1456 (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.
1457 (b) The board of trustees shall file the documents listed in Subsection (1)(a):
1458 (i) within 10 days after adopting a resolution approving a withdrawal under Section
1459 17B-1-510; and
1460 (ii) as soon as practicable after receiving a notice under Subsection 10-2-425(2) of an
1461 automatic withdrawal under Subsection 17B-1-502(2), after receiving a copy of the municipal
1462 legislative body's resolution approving an automatic withdrawal under Subsection
1463 17B-1-502(3)(a), or after receiving notice of a withdrawal of a municipality from a local
1464 district under Section 17B-2-505.
1465 (c) Upon the lieutenant governor's issuance of a certificate of withdrawal under Section
1466 67-1a-6.5, the board shall:
1467 (i) if the withdrawn area is located within the boundary of a single county, submit to
1468 the recorder of that county:
1469 (A) the original:
1470 (I) notice of an impending boundary action;
1471 (II) certificate of withdrawal; and
1472 (III) approved final local entity plat; and
1473 (B) if applicable, a certified copy of the resolution or notice referred to in Subsection
1474 (1)(b); or
1475 (ii) if the withdrawn area is located within the boundaries of more than a single county,
1476 submit:
1477 (A) the original of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III)
1478 and, if applicable, a certified copy of the resolution or notice referred to in Subsection (1)(b) to
1479 one of those counties; and
1480 (B) a certified copy of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III)
1481 and a certified copy of the resolution or notice referred to in Subsection (1)(b) to each other
1482 county.
1483 (2) (a) Upon the lieutenant governor's issuance of the certificate of withdrawal under
1484 Section 67-1a-6.5 for a withdrawal under Section 17B-1-510, for an automatic withdrawal

1485 under Subsection 17B-1-502(3), or for the withdrawal of a municipality from a local district
1486 under Section 17B-1-505, the withdrawal shall be effective, subject to the conditions of the
1487 withdrawal resolution, if applicable.
1488 (b) An automatic withdrawal under Subsection 17B-1-502(3) shall be effective upon
1489 the lieutenant governor's issuance of a certificate of withdrawal under Section 67-1a-6.5.
1490 (3) (a) The local district may provide for the publication of any resolution approving or
1491 denying the withdrawal of an area:
1492 (i) in a newspaper of general circulation in the area proposed for withdrawal; and
1493 (ii) as required in Section 45-1-101.
1494 (b) In lieu of publishing the entire resolution, the local district may publish a notice of
1495 withdrawal or denial of withdrawal, containing:
1496 (i) the name of the local district;
1497 (ii) a description of the area proposed for withdrawal;
1498 (iii) a brief explanation of the grounds on which the board of trustees determined to
1499 approve or deny the withdrawal; and
1500 (iv) the times and place where a copy of the resolution may be examined, which shall
1501 be at the place of business of the local district, identified in the notice, during regular business
1502 hours of the local district as described in the notice and for a period of at least 30 days after the
1503 publication of the notice.
1504 (4) Any sponsor of the petition or receiving entity may contest the board's decision to
1505 deny a withdrawal of an area from the local district by submitting a request, within 60 days
1506 after the resolution is adopted under Section 17B-1-510, to the board of trustees, suggesting
1507 terms or conditions to mitigate or eliminate the conditions upon which the board of trustees
1508 based its decision to deny the withdrawal.
1509 (5) Within 60 days after the request under Subsection (4) is submitted to the board of
1510 trustees, the board may consider the suggestions for mitigation and adopt a resolution
1511 approving or denying the request in the same manner as provided in Section 17B-1-510 with
1512 respect to the original resolution denying the withdrawal and file a notice of the action as
1513 provided in Subsection (1).
1514 (6) (a) Any person in interest may seek judicial review of:
1515 (i) the board of trustees' decision to withdraw an area from the local district;

1516 (ii) the terms and conditions of a withdrawal; or
1517 (iii) the board's decision to deny a withdrawal.
1518 (b) Judicial review under this Subsection (6) shall be initiated by filing an action in the
1519 district court in the county in which a majority of the area proposed to be withdrawn is located:
1520 (i) if the resolution approving or denying the withdrawal is published under Subsection
1521 (3), within 60 days after the publication or after the board of trustees' denial of the request
1522 under Subsection (5);
1523 (ii) if the resolution is not published pursuant to Subsection (3), within 60 days after
1524 the resolution approving or denying the withdrawal is adopted; or
1525 (iii) if a request is submitted to the board of trustees of a local district under Subsection
1526 (4), and the board adopts a resolution under Subsection (5), within 60 days after the board
1527 adopts a resolution under Subsection (5) unless the resolution is published under Subsection
1528 (3), in which event the action [~~must~~] shall be filed within 60 days after the publication.
1529 (c) A court in which an action is filed under this Subsection (6) may not overturn, in
1530 whole or in part, the board of trustees' decision to approve or reject the withdrawal unless:
1531 (i) the court finds the board of trustees' decision to be arbitrary or capricious; or
1532 (ii) the court finds that the board materially failed to follow the procedures set forth in
1533 this part.
1534 (d) A court may award costs and expenses of an action under this section, including
1535 reasonable attorney fees, to the prevailing party.
1536 (7) After the applicable contest period under Subsection (4) or (6), no person may
1537 contest the board of trustees' approval or denial of withdrawal for any cause.
1538 Section 44. Section **17B-1-607** is amended to read:
1539 **17B-1-607. Tentative budget to be prepared -- Review by governing body.**
1540 (1) On or before the first regularly scheduled meeting of the board of trustees in
1541 November for a calendar year entity and May for a fiscal year entity, the budget officer of each
1542 local district shall prepare for the ensuing year, on forms provided by the state auditor, and file
1543 with the board of trustees a tentative budget for each fund for which a budget is required.
1544 (2) (a) Each tentative budget under Subsection (1) shall provide in tabular form:
1545 (i) actual revenues and expenditures for the last completed fiscal year;
1546 (ii) estimated total revenues and expenditures for the current fiscal year; and

1547 (iii) the budget officer's estimates of revenues and expenditures for the budget year.
1548 (b) The budget officer shall estimate the amount of revenue available to serve the needs
1549 of each fund, estimate the portion to be derived from all sources other than general property
1550 taxes, and estimate the portion that [~~must~~] shall be derived from general property taxes.
1551 (3) The tentative budget, when filed by the budget officer with the board of trustees,
1552 shall contain the estimates of expenditures together with specific work programs and any other
1553 supporting data required by this part or requested by the board.
1554 (4) The board of trustees shall review, consider, and tentatively adopt the tentative
1555 budget in any regular meeting or special meeting called for that purpose and may amend or
1556 revise the tentative budget in any manner that the board considers advisable prior to public
1557 hearings, but no appropriation required for debt retirement and interest or reduction of any
1558 existing deficits under Section 17B-1-613, or otherwise required by law, may be reduced below
1559 the minimums so required.
1560 (5) When a new district is created, the board of trustees shall:
1561 (a) prepare a budget covering the period from the date of incorporation to the end of
1562 the fiscal year;
1563 (b) substantially comply with all other provisions of this part with respect to notices
1564 and hearings; and
1565 (c) pass the budget as soon after incorporation as feasible.
1566 Section 45. Section **17B-2a-807** is amended to read:
1567 **17B-2a-807. Public transit district board of trustees -- Appointment --**
1568 **Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.**
1569 (1) (a) If 200,000 people or fewer reside within the boundaries of a public transit
1570 district, the board of trustees shall consist of members appointed by the legislative bodies of
1571 each municipality, county, or unincorporated area within any county on the basis of one
1572 member for each full unit of regularly scheduled passenger routes proposed to be served by the
1573 district in each municipality or unincorporated area within any county in the following calendar
1574 year.
1575 (b) For purposes of determining membership under Subsection (1)(a), the number of
1576 service miles comprising a unit shall be determined jointly by the legislative bodies of the
1577 municipalities or counties comprising the district.

1578 (c) The board of trustees of a public transit district under this Subsection (1) may
1579 include a member that is a commissioner on the Transportation Commission created in Section
1580 72-1-301 and appointed as provided in Subsection (11), who shall serve as a nonvoting, ex
1581 officio member.
1582 (d) Members appointed under this Subsection (1) shall be appointed and added to the
1583 board or omitted from the board at the time scheduled routes are changed, or as municipalities,
1584 counties, or unincorporated areas of counties annex to or withdraw from the district using the
1585 same appointment procedures.
1586 (e) For purposes of appointing members under this Subsection (1), municipalities,
1587 counties, and unincorporated areas of counties in which regularly scheduled passenger routes
1588 proposed to be served by the district in the following calendar year is less than a full unit, as
1589 defined in Subsection (1)(b), may combine with any other similarly situated municipality or
1590 unincorporated area to form a whole unit and may appoint one member for each whole unit
1591 formed.
1592 (2) (a) Subject to Section 17B-2a-807.5, if more than 200,000 people reside within the
1593 boundaries of a public transit district, the board of trustees shall consist of:
1594 (i) 11 members:
1595 (A) appointed as described under this Subsection (2); or
1596 (B) retained in accordance with Section 17B-2a-807.5;
1597 (ii) three members appointed as described in Subsection (4); and
1598 (iii) one voting member appointed as provided in Subsection (11).
1599 (b) Except as provided in Subsections (2)(c) and (d), the board shall apportion voting
1600 members to each county within the district using an average of:
1601 (i) the proportion of population included in the district and residing within each county,
1602 rounded to the nearest 1/11 of the total transit district population; and
1603 (ii) the cumulative proportion of transit sales and use tax collected from areas included
1604 in the district and within each county, rounded to the nearest 1/11 of the total cumulative transit
1605 sales and use tax collected for the transit district.
1606 (c) The board shall join an entire or partial county not apportioned a voting member
1607 under this Subsection (2) with an adjacent county for representation. The combined
1608 apportionment basis included in the district of both counties shall be used for the

1609 apportionment.
1610 (d) (i) If rounding to the nearest 1/11 of the total public transit district apportionment
1611 basis under Subsection (2)(b) results in an apportionment of more than 11 members, the county
1612 or combination of counties with the smallest additional fraction of a whole member proportion
1613 shall have one less member apportioned to it.
1614 (ii) If rounding to the nearest 1/11 of the total public transit district apportionment
1615 basis under Subsection (2)(b) results in an apportionment of less than 11 members, the county
1616 or combination of counties with the largest additional fraction of a whole member proportion
1617 shall have one more member apportioned to it.
1618 (e) If the population in the unincorporated area of a county is at least 140,000, the
1619 county executive, with the advice and consent of the county legislative body, shall appoint one
1620 voting member to represent the population within a county's unincorporated area.
1621 (f) If a municipality's population is at least 160,000, the chief municipal executive,
1622 with the advice and consent of the municipal legislative body, shall appoint one voting member
1623 to represent the population within a municipality.
1624 (g) (i) The number of voting members appointed from a county and municipalities
1625 within a county under Subsections (2)(e) and (f) shall be subtracted from the county's total
1626 voting member apportionment under this Subsection (2).
1627 (ii) Notwithstanding Subsections (2)(l) and (10), no more than one voting member
1628 appointed by an appointing entity may be a locally elected public official.
1629 (h) If the entire county is within the district, the remaining voting members for the
1630 county shall represent the county or combination of counties, if Subsection (2)(c) applies, or
1631 the municipalities within the county.
1632 (i) If the entire county is not within the district, and the county is not joined with
1633 another county under Subsection (2)(c), the remaining voting members for the county shall
1634 represent a municipality or combination of municipalities.
1635 (j) (i) Except as provided under Subsections (2)(e) and (f), voting members
1636 representing counties, combinations of counties if Subsection (2)(c) applies, or municipalities
1637 within the county shall be designated and appointed by a simple majority of the chief
1638 executives of the municipalities within the county or combinations of counties if Subsection
1639 (2)(c) applies.

1640 (ii) The appointments shall be made by joint written agreement of the appointing
1641 municipalities, with the consent and approval of the county legislative body of the county that
1642 has at least 1/11 of the district's apportionment basis.
1643 (k) Voting members representing a municipality or combination of municipalities shall
1644 be designated and appointed by the chief executive officer of the municipality or simple
1645 majority of chief executive officers of municipalities with the consent of the legislative body of
1646 the municipality or municipalities.
1647 (l) The appointment of voting members shall be made without regard to partisan
1648 political affiliation from among citizens in the community.
1649 (m) Each voting member shall be a bona fide resident of the municipality, county, or
1650 unincorporated area or areas which the voting member is to represent for at least six months
1651 before the date of appointment, and [~~must~~] shall continue in that residency to remain qualified
1652 to serve as a voting member.
1653 (n) (i) All population figures used under this section shall be derived from the most
1654 recent official census or census estimate of the United States Bureau of the Census.
1655 (ii) If population estimates are not available from the United States Bureau of Census,
1656 population figures shall be derived from the estimate from the Utah Population Estimates
1657 Committee.
1658 (iii) All transit sales and use tax totals shall be obtained from the State Tax
1659 Commission.
1660 (o) (i) The board shall be apportioned as provided under this section in conjunction
1661 with the decennial United States Census Bureau report every 10 years.
1662 (ii) Within 120 days following the receipt of the population estimates under this
1663 Subsection (2)(o), the district shall reapportion representation on the board of trustees in
1664 accordance with this section.
1665 (iii) The board shall adopt by resolution a schedule reflecting the current and proposed
1666 apportionment.
1667 (iv) Upon adoption of the resolution, the board shall forward a copy of the resolution to
1668 each of its constituent entities as defined under Section 17B-1-701.
1669 (v) The appointing entities gaining a new board member shall appoint a new member
1670 within 30 days following receipt of the resolution.

1671 (vi) The appointing entities losing a board member shall inform the board of which
1672 member currently serving on the board will step down:
1673 (A) upon appointment of a new member under Subsection (2)(o)(v); or
1674 (B) in accordance with Section 17B-2a-807.5.
1675 (3) Upon the completion of an annexation to a public transit district under Chapter 1,
1676 Part 4, Annexation, the annexed area shall have a representative on the board of trustees on the
1677 same basis as if the area had been included in the district as originally organized.
1678 (4) In addition to the voting members appointed in accordance with Subsection (2), the
1679 board shall consist of three voting members appointed as follows:
1680 (a) one member appointed by the speaker of the House of Representatives;
1681 (b) one member appointed by the president of the Senate; and
1682 (c) one member appointed by the governor.
1683 (5) (a) Except as provided in Section 17B-2a-807.5, the terms of office of the voting
1684 members of the board shall be four years or until a successor is appointed, qualified, seated,
1685 and has taken the oath of office.
1686 (b) (i) A voting member may not be appointed for more than three successive full
1687 terms regardless of the appointing entity that appoints the voting member.
1688 (ii) A person:
1689 (A) may serve no more than 12 years on a public transit district board of trustees
1690 described in Subsection (2)(a) regardless of the appointing entity that appoints the member; and
1691 (B) that has served 12 years on a public transit district board of trustees described in
1692 Subsection (2)(a) is ineligible for reappointment to a public transit board of trustees described
1693 in Subsection (2)(a).
1694 (6) (a) Vacancies for voting members shall be filled by the official appointing the
1695 member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy
1696 within 90 days.
1697 (b) If the appointing official under Subsection (1) does not fill the vacancy within 90
1698 days, the board of trustees of the authority shall fill the vacancy.
1699 (c) If the appointing official under Subsection (2) does not fill the vacancy within 90
1700 days, the governor, with the advice and consent of the Senate, shall fill the vacancy.
1701 (7) (a) Each voting member may cast one vote on all questions, orders, resolutions, and

1702 ordinances coming before the board of trustees.
1703 (b) A majority of all voting members of the board of trustees are a quorum for the
1704 transaction of business.
1705 (c) The affirmative vote of a majority of all voting members present at any meeting at
1706 which a quorum was initially present shall be necessary and, except as otherwise provided, is
1707 sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.
1708 (8) Each public transit district shall pay to each voting member:
1709 (a) an attendance fee of $50 per board or committee meeting attended, not to exceed
1710 $200 in any calendar month to any voting member; and
1711 (b) reasonable mileage and expenses necessarily incurred to attend board or committee
1712 meetings.
1713 (9) (a) Members of the initial board of trustees shall convene at the time and place
1714 fixed by the chief executive officer of the entity initiating the proceedings.
1715 (b) The board of trustees shall elect from its voting membership a chair, vice chair, and
1716 secretary.
1717 (c) The members elected under Subsection (9)(b) shall serve for a period of two years
1718 or until their successors shall be elected and qualified.
1719 (d) On or after January 1, 2011, a locally elected public official is not eligible to serve
1720 as the chair, vice chair, or secretary of the board of trustees.
1721 (10) Except as otherwise authorized under Subsection (2)(g) and Section
1722 17B-2a-807.5, at the time of a voting member's appointment or during a voting member's
1723 tenure in office, a voting member may not hold any employment, except as an independent
1724 contractor or locally elected public official, with a county or municipality within the district.
1725 (11) The Transportation Commission created in Section 72-1-301:
1726 (a) for a public transit district serving a population of 200,000 people or fewer, may
1727 appoint a commissioner of the Transportation Commission to serve on the board of trustees as
1728 a nonvoting, ex officio member; and
1729 (b) for a public transit district serving a population of more than 200,000 people, shall
1730 appoint a commissioner of the Transportation Commission to serve on the board of trustees as
1731 a voting member.
1732 (12) (a) (i) Each member of the board of trustees of a public transit district is subject to

1733 recall at any time by the legislative body of the county or municipality from which the member
1734 is appointed.
1735 (ii) Each recall of a board of trustees member shall be made in the same manner as the
1736 original appointment.
1737 (iii) The legislative body recalling a board of trustees member shall provide written
1738 notice to the member being recalled.
1739 (b) Upon providing written notice to the board of trustees, a member of the board may
1740 resign from the board of trustees.
1741 (c) Except as provided in Section 17B-2a-807.5, if a board member is recalled or
1742 resigns under this Subsection (12), the vacancy shall be filled as provided in Subsection (6).
1743 Section 46. Section **17B-2a-818.5** is amended to read:
1744 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
1745 **coverage.**
1746 (1) For purposes of this section:
1747 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
1748 34A-2-104 who:
1749 (i) works at least 30 hours per calendar week; and
1750 (ii) meets employer eligibility waiting requirements for health care insurance which
1751 may not exceed the first day of the calendar month following 90 days from the date of hire.
1752 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
1753 (c) "Qualified health insurance coverage" means at the time the contract is entered into
1754 or renewed:
1755 (i) a health benefit plan and employer contribution level with a combined actuarial
1756 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
1757 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
1758 a contribution level of 50% of the premium for the employee and the dependents of the
1759 employee who reside or work in the state, in which:
1760 (A) the employer pays at least 50% of the premium for the employee and the
1761 dependents of the employee who reside or work in the state; and
1762 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
1763 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket

1764 maximum based on income levels:
1765 (Aa) the deductible is $750 per individual and $2,250 per family; and
1766 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
1767 (II) dental coverage is not required; and
1768 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
1769 apply; or
1770 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
1771 deductible that is either:
1772 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
1773 or
1774 (II) a deductible that is higher than the lowest deductible permitted for a federally
1775 qualified high deductible health plan, but includes an employer contribution to a health savings
1776 account in a dollar amount at least equal to the dollar amount difference between the lowest
1777 deductible permitted for a federally qualified high deductible plan and the deductible for the
1778 employer offered federally qualified high deductible plan;
1779 (B) an out-of-pocket maximum that does not exceed three times the amount of the
1780 annual deductible; and
1781 (C) under which the employer pays 75% of the premium for the employee and the
1782 dependents of the employee who work or reside in the state.
1783 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
1784 (2) (a) Except as provided in Subsection (3), this section applies to a design or
1785 construction contract entered into by the public transit district on or after July 1, 2009, and to a
1786 prime contractor or to a subcontractor in accordance with Subsection (2)(b).
1787 (b) (i) A prime contractor is subject to this section if the prime contract is in the
1788 amount of $1,500,000 or greater.
1789 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
1790 $750,000 or greater.
1791 (3) This section does not apply if:
1792 (a) the application of this section jeopardizes the receipt of federal funds;
1793 (b) the contract is a sole source contract; or
1794 (c) the contract is an emergency procurement.

1795 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
1796 or a modification to a contract, when the contract does not meet the initial threshold required
1797 by Subsection (2).
1798 (b) A person who intentionally uses change orders or contract modifications to
1799 circumvent the requirements of Subsection (2) is guilty of an infraction.
1800 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
1801 district that the contractor has and will maintain an offer of qualified health insurance coverage
1802 for the contractor's employees and the employee's dependents during the duration of the
1803 contract.
1804 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
1805 shall demonstrate to the public transit district that the subcontractor has and will maintain an
1806 offer of qualified health insurance coverage for the subcontractor's employees and the
1807 employee's dependents during the duration of the contract.
1808 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
1809 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
1810 the public transit district under Subsection (6).
1811 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
1812 requirements of Subsection (5)(b).
1813 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
1814 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
1815 the public transit district under Subsection (6).
1816 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
1817 requirements of Subsection (5)(a).
1818 (6) The public transit district shall adopt ordinances:
1819 (a) in coordination with:
1820 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
1821 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
1822 (iii) the State Building Board in accordance with Section 63A-5-205;
1823 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
1824 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
1825 (b) which establish:

1826 (i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to
1827 the public transit district compliance with this section which shall include:
1828 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
1829 (b) more than twice in any 12-month period; and
1830 (B) that the actuarially equivalent determination required in Subsection (1) is met by
1831 the contractor if the contractor provides the department or division with a written statement of
1832 actuarial equivalency from either:
1833 (I) the Utah Insurance Department;
1834 (II) an actuary selected by the contractor or the contractor's insurer; or
1835 (III) an underwriter who is responsible for developing the employer group's premium
1836 rates;
1837 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
1838 violates the provisions of this section, which may include:
1839 (A) a three-month suspension of the contractor or subcontractor from entering into
1840 future contracts with the public transit district upon the first violation;
1841 (B) a six-month suspension of the contractor or subcontractor from entering into future
1842 contracts with the public transit district upon the second violation;
1843 (C) an action for debarment of the contractor or subcontractor in accordance with
1844 Section 63G-6-804 upon the third or subsequent violation; and
1845 (D) monetary penalties which may not exceed 50% of the amount necessary to
1846 purchase qualified health insurance coverage for employees and dependents of employees of
1847 the contractor or subcontractor who were not offered qualified health insurance coverage
1848 during the duration of the contract; and
1849 (iii) a website on which the district shall post the benchmark for the qualified health
1850 insurance coverage identified in Subsection (1)(c)(i).
1851 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
1852 or subcontractor who intentionally violates the provisions of this section shall be liable to the
1853 employee for health care costs that would have been covered by qualified health insurance
1854 coverage.
1855 (ii) An employer has an affirmative defense to a cause of action under Subsection
1856 (7)(a)(i) if:

1857 (A) the employer relied in good faith on a written statement of actuarial equivalency
1858 provided by an:
1859 (I) actuary; or
1860 (II) underwriter who is responsible for developing the employer group's premium rates;
1861 or
1862 (B) a department or division determines that compliance with this section is not
1863 required under the provisions of Subsection (3) or (4).
1864 (b) An employee has a private right of action only against the employee's employer to
1865 enforce the provisions of this Subsection (7).
1866 (8) Any penalties imposed and collected under this section shall be deposited into the
1867 Medicaid Restricted Account created in Section 26-18-402.
1868 (9) The failure of a contractor or subcontractor to provide qualified health insurance
1869 coverage as required by this section:
1870 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1871 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
1872 Legal and Contractual Remedies; and
1873 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1874 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1875 or construction.
1876 Section 47. Section **18-1-1** is amended to read:
1877 **18-1-1. Liability of owners -- Scienter -- Dogs used in law enforcement.**
1878 (1) Every person owning or keeping a dog [~~shall be~~] is liable in damages for injury
1879 committed by [~~such~~] the dog, and it [~~shall not be~~] is not necessary in [~~any~~] the action brought
1880 therefor to allege or prove that [~~such~~] the dog was of a vicious or mischievous disposition or
1881 that the owner or keeper [~~thereof~~] of the dog knew that it was vicious or mischievous[~~; but~~
1882 ~~neither~~].
1883 (2) Notwithstanding Subsection (1), neither the state nor any county, city, or town in
1884 the state nor any peace officer employed by any of them shall be liable in damages for injury
1885 committed by a dog [~~when: (1) The~~], if:
1886 (a) the dog has been trained to assist in law enforcement[~~,~~]; and [~~(2)~~]
1887 (b) the injury occurs while the dog is reasonably and carefully being used in the

1888 apprehension, arrest, or location of a suspected offender or in maintaining or controlling the
1889 public order.
1890 Section 48. Section **19-1-206** is amended to read:
1891 **19-1-206. Contracting powers of department -- Health insurance coverage.**
1892 (1) For purposes of this section:
1893 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
1894 34A-2-104 who:
1895 (i) works at least 30 hours per calendar week; and
1896 (ii) meets employer eligibility waiting requirements for health care insurance which
1897 may not exceed the first day of the calendar month following 90 days from the date of hire.
1898 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
1899 (c) "Qualified health insurance coverage" means at the time the contract is entered into
1900 or renewed:
1901 (i) a health benefit plan and employer contribution level with a combined actuarial
1902 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
1903 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
1904 a contribution level of 50% of the premium for the employee and the dependents of the
1905 employee who reside or work in the state, in which:
1906 (A) the employer pays at least 50% of the premium for the employee and the
1907 dependents of the employee who reside or work in the state; and
1908 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
1909 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket
1910 maximum based on income levels:
1911 (Aa) the deductible is $750 per individual and $2,250 per family; and
1912 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
1913 (II) dental coverage is not required; and
1914 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
1915 apply; or
1916 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
1917 deductible that is either:
1918 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

1919 or
1920 (II) a deductible that is higher than the lowest deductible permitted for a federally
1921 qualified high deductible health plan, but includes an employer contribution to a health savings
1922 account in a dollar amount at least equal to the dollar amount difference between the lowest
1923 deductible permitted for a federally qualified high deductible plan and the deductible for the
1924 employer offered federally qualified high deductible plan;
1925 (B) an out-of-pocket maximum that does not exceed three times the amount of the
1926 annual deductible; and
1927 (C) under which the employer pays 75% of the premium for the employee and the
1928 dependents of the employee who work or reside in the state.
1929 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
1930 (2) (a) Except as provided in Subsection (3), this section applies to a design or
1931 construction contract entered into by or delegated to the department or a division or board of
1932 the department on or after July 1, 2009, and to a prime contractor or subcontractor in
1933 accordance with Subsection (2)(b).
1934 (b) (i) A prime contractor is subject to this section if the prime contract is in the
1935 amount of $1,500,000 or greater.
1936 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
1937 $750,000 or greater.
1938 (3) This section does not apply to contracts entered into by the department or a division
1939 or board of the department if:
1940 (a) the application of this section jeopardizes the receipt of federal funds;
1941 (b) the contract or agreement is between:
1942 (i) the department or a division or board of the department; and
1943 (ii) (A) another agency of the state;
1944 (B) the federal government;
1945 (C) another state;
1946 (D) an interstate agency;
1947 (E) a political subdivision of this state; or
1948 (F) a political subdivision of another state;
1949 (c) the executive director determines that applying the requirements of this section to a

1950 particular contract interferes with the effective response to an immediate health and safety
1951 threat from the environment; or
1952 (d) the contract is:
1953 (i) a sole source contract; or
1954 (ii) an emergency procurement.
1955 (4) (a) This section does not apply to a change order as defined in Section 63G-6-103,
1956 or a modification to a contract, when the contract does not meet the initial threshold required
1957 by Subsection (2).
1958 (b) A person who intentionally uses change orders or contract modifications to
1959 circumvent the requirements of Subsection (2) is guilty of an infraction.
1960 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
1961 director that the contractor has and will maintain an offer of qualified health insurance
1962 coverage for the contractor's employees and the employees' dependents during the duration of
1963 the contract.
1964 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
1965 demonstrate to the executive director that the subcontractor has and will maintain an offer of
1966 qualified health insurance coverage for the subcontractor's employees and the employees'
1967 dependents during the duration of the contract.
1968 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
1969 of the contract is subject to penalties in accordance with administrative rules adopted by the
1970 department under Subsection (6).
1971 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
1972 requirements of Subsection (5)(b).
1973 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
1974 the duration of the contract is subject to penalties in accordance with administrative rules
1975 adopted by the department under Subsection (6).
1976 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
1977 requirements of Subsection (5)(a).
1978 (6) The department shall adopt administrative rules:
1979 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
1980 (b) in coordination with:

1981 (i) a public transit district in accordance with Section 17B-2a-818.5;
1982 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
1983 (iii) the State Building Board in accordance with Section 63A-5-205;
1984 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
1985 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
1986 (vi) the Legislature's Administrative Rules Review Committee; and
1987 (c) which establish:
1988 (i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to
1989 the public transit district compliance with this section [~~which~~] that shall include:
1990 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
1991 (b) more than twice in any 12-month period; and
1992 (B) that the actuarially equivalent determination required in Subsection (1) is met by
1993 the contractor if the contractor provides the department or division with a written statement of
1994 actuarial equivalency from either:
1995 (I) the Utah Insurance Department;
1996 (II) an actuary selected by the contractor or the contractor's insurer; or
1997 (III) an underwriter who is responsible for developing the employer group's premium
1998 rates;
1999 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
2000 violates the provisions of this section, which may include:
2001 (A) a three-month suspension of the contractor or subcontractor from entering into
2002 future contracts with the state upon the first violation;
2003 (B) a six-month suspension of the contractor or subcontractor from entering into future
2004 contracts with the state upon the second violation;
2005 (C) an action for debarment of the contractor or subcontractor in accordance with
2006 Section 63G-6-804 upon the third or subsequent violation; and
2007 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
2008 of the amount necessary to purchase qualified health insurance coverage for an employee and
2009 the dependents of an employee of the contractor or subcontractor who was not offered qualified
2010 health insurance coverage during the duration of the contract; and
2011 (iii) a website on which the department shall post the benchmark for the qualified

2012 health insurance coverage identified in Subsection (1)(c)(i).
2013 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
2014 subcontractor who intentionally violates the provisions of this section shall be liable to the
2015 employee for health care costs that would have been covered by qualified health insurance
2016 coverage.
2017 (ii) An employer has an affirmative defense to a cause of action under Subsection
2018 (7)(a)(i) if:
2019 (A) the employer relied in good faith on a written statement of actuarial equivalency
2020 provided by:
2021 (I) an actuary; or
2022 (II) an underwriter who is responsible for developing the employer group's premium
2023 rates; or
2024 (B) the department determines that compliance with this section is not required under
2025 the provisions of Subsection (3) or (4).
2026 (b) An employee has a private right of action only against the employee's employer to
2027 enforce the provisions of this Subsection (7).
2028 (8) Any penalties imposed and collected under this section shall be deposited into the
2029 Medicaid Restricted Account created in Section 26-18-402.
2030 (9) The failure of a contractor or subcontractor to provide qualified health insurance
2031 coverage as required by this section:
2032 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
2033 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
2034 Legal and Contractual Remedies; and
2035 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
2036 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2037 or construction.
2038 Section 49. Section **19-2-109.1** is amended to read:
2039 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**
2040 (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:
2041 (a) "EPA" means the federal Environmental Protection Agency.
2042 (b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

2043 (c) "Operating permit" means a permit issued by the executive secretary to sources of
2044 air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.
2045 (d) "Program" means the air pollution operating permit program established under this
2046 section to comply with Title V of the 1990 Clean Air Act.
2047 (e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean
2048 Air Act and implementing federal regulations.
2049 (2) (a) A person may not operate any source of air pollution required to have a permit
2050 under Title V of the 1990 Clean Air Act without having obtained an operating permit from the
2051 executive secretary under procedures the board establishes by rule.
2052 (b) A person is not required to submit an operating permit application until the
2053 governor has submitted an operating permit program to the EPA.
2054 (c) Any operating permit issued under this section may not become effective until the
2055 day after the EPA issues approval of the permit program or November 15, 1995, whichever
2056 occurs first.
2057 (3) (a) Operating permits issued under this section shall be for a period of five years
2058 unless the board makes a written finding, after public comment and hearing, and based on
2059 substantial evidence in the record, that an operating permit term of less than five years is
2060 necessary to protect the public health and the environment of the state.
2061 (b) The executive secretary may issue, modify, or renew an operating permit only after
2062 providing public notice, an opportunity for public comment, and an opportunity for a public
2063 hearing.
2064 (c) The executive secretary shall, in conformity with the 1990 Clean Air Act and
2065 implementing federal regulations, revise the conditions of issued operating permits to
2066 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990
2067 Clean Air Act, if the remaining period of the permit is three or more years.
2068 (d) The executive secretary may terminate, modify, revoke, or reissue an operating
2069 permit for cause.
2070 (4) (a) The board shall establish a proposed annual emissions fee that conforms with
2071 Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources
2072 required to obtain a permit. The emissions fee established under this section is in addition to
2073 fees assessed under Section 19-2-108 for issuance of an approval order.

2074 (b) In establishing the fee the board shall comply with the provisions of Section
2075 63J-1-504 that require a public hearing and require the established fee to be submitted to the
2076 Legislature for its approval as part of the department's annual appropriations request.
2077 (c) The fee shall cover all reasonable direct and indirect costs required to develop and
2078 administer the program and the small business assistance program established under Section
2079 19-2-109.2. The board shall prepare an annual report of the emissions fees collected and the
2080 costs covered by those fees under this Subsection (4).
2081 (d) The fee shall be established uniformly for all sources required to obtain an
2082 operating permit under the program and for all regulated pollutants.
2083 (e) The fee may not be assessed for emissions of any regulated pollutant if the
2084 emissions are already accounted for within the emissions of another regulated pollutant.
2085 (f) An emissions fee may not be assessed for any amount of a regulated pollutant
2086 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.
2087 (5) Emissions fees for the period:
2088 (a) of July 1, 1992, through June 30, 1993, shall be based on the most recent emissions
2089 inventory prepared by the executive secretary; and
2090 (b) on and after July 1, 1993, but [~~prior to~~] before issuance of an operating permit, shall
2091 be based on the most recent emissions inventory, unless a source elects prior to July 1, 1992, to
2092 base the fee on allowable emissions, if applicable for a regulated pollutant.
2093 (6) After an operating permit is issued the emissions fee shall be based on actual
2094 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a
2095 permit, to base the fee during the period of the permit on allowable emissions for that regulated
2096 pollutant.
2097 (7) If the owner or operator of a source subject to this section fails to timely pay an
2098 annual emissions fee, the executive secretary may:
2099 (a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus
2100 interest on the fee computed at 12% annually; or
2101 (b) revoke the operating permit.
2102 (8) The owner or operator of a source subject to this section may contest an emissions
2103 fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4,
2104 Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (8).

2105 (a) The owner or operator [~~must~~] shall pay the fee under protest prior to being entitled
2106 to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right
2107 to contest the fee or penalty under this section.
2108 (b) A request for a hearing under this Subsection (8) shall be made after payment of the
2109 emissions fee and within six months after the emissions fee was due.
2110 (9) To reinstate an operating permit revoked under Subsection (7) the owner or
2111 operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all
2112 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.
2113 (10) All emissions fees and penalties collected by the department under this section
2114 shall be deposited in the General Fund as the Air Pollution Operating Permit Program
2115 dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by
2116 the department in developing and administering the program and the small business assistance
2117 program under Section 19-2-109.2.
2118 (11) Failure of the executive secretary to act on any operating permit application or
2119 renewal is a final administrative action only for the purpose of obtaining judicial review by any
2120 of the following persons to require the executive secretary to take action on the permit or its
2121 renewal without additional delay:
2122 (a) the applicant;
2123 (b) any person who participated in the public comment process; or
2124 (c) any other person who could obtain judicial review of that action under applicable
2125 law.
2126 Section 50. Section **19-2-113** is amended to read:
2127 **19-2-113. Variances -- Judicial review.**
2128 (1) (a) Any person who owns or is in control of any plant, building, structure,
2129 establishment, process, or equipment may apply to the board for a variance from its rules.
2130 (b) The board may grant the requested variance following an announced public
2131 meeting, if it finds, after considering the endangerment to human health and safety and other
2132 relevant factors, that compliance with the rules from which variance is sought would produce
2133 serious hardship without equal or greater benefits to the public.
2134 (2) A variance may not be granted under this section until the board has considered the
2135 relative interests of the applicant, other owners of property likely to be affected by the

2136 discharges, and the general public.
2137 (3) Any variance or renewal of a variance shall be granted within the requirements of
2138 Subsection (1) and for time periods and under conditions consistent with the reasons for it, and
2139 within the following limitations:
2140 (a) if the variance is granted on the grounds that there are no practicable means known
2141 or available for the adequate prevention, abatement, or control of the air pollution involved, it
2142 shall be only until the necessary means for prevention, abatement, or control become known
2143 and available, and subject to the taking of any substitute or alternate measures that the board
2144 may prescribe;
2145 (b) (i) if the variance is granted on the grounds that compliance with the requirements
2146 from which variance is sought will require that measures, because of their extent or cost, must
2147 be spread over a long period of time, the variance shall be granted for a reasonable time that, in
2148 the view of the board, is required for implementation of the necessary measures; and
2149 (ii) a variance granted on this ground shall contain a timetable for the implementation
2150 of remedial measures in an expeditious manner and shall be conditioned on adherence to the
2151 timetable; or
2152 (c) if the variance is granted on the ground that it is necessary to relieve or prevent
2153 hardship of a kind other than that provided for in Subsection (3)(a) or (b), it [~~shall not~~] may not
2154 be granted for more than one year.
2155 (4) (a) Any variance granted under this section may be renewed on terms and
2156 conditions and for periods that would be appropriate for initially granting a variance.
2157 (b) If a complaint is made to the board because of the variance, a renewal may not be
2158 granted unless, following an announced public meeting, the board finds that renewal is
2159 justified.
2160 (c) To receive a renewal, an applicant shall submit a request for agency action to the
2161 board requesting a renewal.
2162 (d) Immediately upon receipt of an application for renewal, the board shall give public
2163 notice of the application as required by its rules.
2164 (5) (a) A variance or renewal is not a right of the applicant or holder but may be
2165 granted at the board's discretion.
2166 (b) A person aggrieved by the board's decision may obtain judicial review.

2167 (c) Venue for judicial review of informal adjudicative proceedings is in the district
2168 court in which the air contaminant source is situated.
2169 (6) (a) The board may review any variance during the term for which it was granted.
2170 (b) The review procedure is the same as that for an original application.
2171 (c) The variance may be revoked upon a finding that:
2172 (i) the nature or amount of emission has changed or increased; or
2173 (ii) if facts existing at the date of the review had existed at the time of the original
2174 application, the variance would not have been granted.
2175 (7) Nothing in this section and no variance or renewal granted pursuant to it shall be
2176 construed to prevent or limit the application of the emergency provisions and procedures of
2177 Section 19-2-112 to any person or property.
2178 Section 51. Section **19-2-115** is amended to read:
2179 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**
2180 (1) As used in this section, the terms "knowingly," "willfully," and "criminal
2181 negligence" shall mean as defined in Section 76-2-103.
2182 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made
2183 under this chapter is subject in a civil proceeding to a penalty not to exceed $10,000 per day for
2184 each violation.
2185 (b) Subsection (2)(a) also applies to rules made under the authority of Section
2186 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
2187 Subchapter II - Asbestos Hazard Emergency Response.
2188 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances
2189 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the
2190 amounts specified in that section and shall be used in accordance with that section.
2191 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under
2192 Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person
2193 knowingly violates any of the following under this chapter:
2194 (a) an applicable standard or limitation;
2195 (b) a permit condition; or
2196 (c) a fee or filing requirement.
2197 (4) A person is guilty of a third degree felony and is subject to imprisonment under

2198 Section 76-3-203 and a fine of not more than $25,000 per day of violation who knowingly:
2199 (a) makes any false material statement, representation, or certification, in any notice or
2200 report required by permit; or
2201 (b) renders inaccurate any monitoring device or method required to be maintained by
2202 this chapter or applicable rules made under this chapter.
2203 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty
2204 under Section 19-2-109.1.
2205 (6) A person who willfully violates Section 19-2-120 is guilty of a class A
2206 misdemeanor.
2207 (7) A person who knowingly violates any requirement of an applicable implementation
2208 plan adopted by the board, more than 30 days after having been notified in writing by the
2209 executive secretary that the person is violating the requirement, knowingly violates an order
2210 issued under Subsection 19-2-110(1)(a), or knowingly handles or disposes of asbestos in
2211 violation of a rule made under this chapter is guilty of a third degree felony and subject to
2212 imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation
2213 in the case of the first offense, and not more than $50,000 per day of violation in the case of
2214 subsequent offenses.
2215 (8) (a) As used in this section:
2216 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.
2217 7412 or any extremely hazardous substance listed under 42 U.S.C. 11002(a)(2).
2218 (ii) "Organization" means a legal entity, other than a government, established or
2219 organized for any purpose, and includes a corporation, company, association, firm, partnership,
2220 joint stock company, foundation, institution, trust, society, union, or any other association of
2221 persons.
2222 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of
2223 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
2224 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
2225 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
2226 Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person with
2227 criminal negligence:
2228 (A) releases into the ambient air any hazardous air pollutant; and

2229 (B) places another person in imminent danger of death or serious bodily injury.
2230 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is
2231 carrying out the employee's normal activities and who is not a part of senior management
2232 personnel or a corporate officer.
2233 (c) A person is guilty of a second degree felony and is subject to imprisonment under
2234 Section 76-3-203 and a fine of not more than $50,000 per day of violation if that person:
2235 (i) knowingly releases into the ambient air any hazardous air pollutant; and
2236 (ii) knows at the time that the person is placing another person in imminent danger of
2237 death or serious bodily injury.
2238 (d) If a person is an organization, it shall, upon conviction of violating Subsection
2239 (8)(c), be subject to a fine of not more than $1,000,000.
2240 (e) (i) A defendant who is an individual is considered to have acted knowingly under
2241 Subsections (8)(c) and (d), if:
2242 (A) the defendant's conduct placed another person in imminent danger of death or
2243 serious bodily injury; and
2244 (B) the defendant was aware of or believed that there was an imminent danger of death
2245 or serious bodily injury to another person.
2246 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
2247 the defendant.
2248 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
2249 knowledge, including evidence that the defendant took affirmative steps to be shielded from
2250 receiving relevant information.
2251 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the
2252 conduct charged was freely consented to by the person endangered and that the danger and
2253 conduct charged were reasonably foreseeable hazards of:
2254 (A) an occupation, a business, a profession; or
2255 (B) medical treatment or medical or scientific experimentation conducted by
2256 professionally approved methods and the other person was aware of the risks involved prior to
2257 giving consent.
2258 (ii) The defendant has the burden of proof to establish any affirmative defense under
2259 this Subsection (8)(f) and [~~must~~] shall prove that defense by a preponderance of the evidence.

2260 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,
2261 all penalties assessed and collected under the authority of this section shall be deposited in the
2262 General Fund.
2263 (b) The department may reimburse itself and local governments from money collected
2264 from civil penalties for extraordinary expenses incurred in environmental enforcement
2265 activities.
2266 (c) The department shall regulate reimbursements by making rules in accordance with
2267 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
2268 (i) define qualifying environmental enforcement activities; and
2269 (ii) define qualifying extraordinary expenses.
2270 Section 52. Section **19-3-302** is amended to read:
2271 **19-3-302. Legislative intent.**
2272 (1) (a) The state [~~of Utah~~] enacts this part to prevent the placement of any high-level
2273 nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that
2274 high-level nuclear waste or greater than class C radioactive waste may be placed within the
2275 exterior boundaries of the state, pursuant to a license from the federal government, or by the
2276 federal government itself, in violation of this state law.
2277 (b) Due to this possibility, the state also enacts provisions in this part to regulate
2278 transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level
2279 nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and
2280 protecting the state's interests in environmental and economic resources consistent with 42
2281 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste
2282 Policy Act, should the federal government decide to authorize any entity to operate, or operate
2283 itself, in violation of this state law.
2284 (2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for
2285 siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or
2286 treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the
2287 Nuclear Waste Policy Act specifically define authorized storage and disposal programs and
2288 activities. The state [~~of Utah~~] in enacting this part is not preempted by federal law, since any
2289 proposed facilities that would be sited in Utah are not contemplated or authorized by federal
2290 law and, in any circumstance, this part is not contrary to or inconsistent with federal law or

2291 congressional intent.
2292 (3) The state [~~of Utah~~] has environmental and economic interests which do not involve
2293 nuclear safety regulation, and which [~~must~~] shall be considered and complied with in siting a
2294 high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in
2295 storage, treatment, or disposal facility and in transporting these wastes in the state.
2296 (4) An additional primary purpose of this part is to ensure protection of the state from
2297 nonradiological hazards associated with any waste transportation, transfer, storage, decay in
2298 storage, treatment, or disposal.
2299 (5) The state recognizes the sovereign rights of Indian tribes within the state [~~of Utah~~].
2300 However, any proposed transfer, storage, decay in storage, treatment, or disposal facility
2301 located on a reservation which directly affects and impacts state interests by creating
2302 off-reservation effects such as potential or actual degradation of soils and groundwater,
2303 potential or actual contamination of surface water, pollution of the ambient air, emergency
2304 planning costs, impacts on development, agriculture, and ranching, and increased
2305 transportation activity, is subject to state jurisdiction.
2306 (6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear
2307 waste or higher than class C radioactive waste. The state does have a long history of regulation
2308 of radioactive sources and natural resources and in the transfer, storage, treatment, and
2309 transportation of materials and wastes throughout the state. The state finds that its interests are
2310 even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust
2311 lands primarily to avoid state regulation and state authorities under federal law.
2312 (7) (a) This part is not intended to modify existing state requirements for obtaining
2313 environmental approvals, permits, and licenses, including surface and groundwater permits and
2314 air quality permits, when the permits are necessary under state and federal law to construct and
2315 operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage,
2316 decay in storage, treatment, or disposal facility.
2317 (b) Any source of air pollution proposed to be located within the state, including
2318 sources located within the boundaries of an Indian reservation, which will potentially or
2319 actually have a direct and significant impact on ambient air within the state, is required to
2320 obtain an approval order and permit from the state under Section 19-2-108.
2321 (c) Any facility which will potentially or actually have a significant impact on the

2322 state's surface or groundwater resources is required to obtain a permit under Section 19-5-107
2323 even if located within the boundaries of an Indian reservation.
2324 (8) The state finds that the transportation, transfer, storage, decay in storage, treatment,
2325 and disposal of high-level nuclear waste and greater than class C radioactive waste within the
2326 state is an ultra-hazardous activity which carries with it the risk that any release of waste may
2327 result in enormous economic and human injury.
2328 Section 53. Section **19-3-308** is amended to read:
2329 **19-3-308. Application fee and annual fees.**
2330 (1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or
2331 disposal facility shall be accompanied by an initial fee of $5,000,000.
2332 (b) The applicant shall subsequently pay an additional fee to cover the costs to the state
2333 associated with review of the application, including costs to the state and the state's contractors
2334 for permitting, technical, administrative, legal, safety, and emergency response reviews,
2335 planning, training, infrastructure, and other impact analyses, studies, and services required to
2336 evaluate a proposed facility.
2337 (2) For the purpose of funding the state oversight and inspection of any waste transfer,
2338 storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure,
2339 including[~~, but not limited to~~] providing for state Department of Environmental Quality, state
2340 Department of Transportation, state Department of Public Safety, and other state agencies'
2341 technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic,
2342 law enforcement, and emergency resources necessary to respond to these facilities, the owner
2343 or operator shall pay to the state a fee as established by department rule under Section
2344 63J-1-504, to be assessed:
2345 (a) per ton of storage cask and high-level nuclear waste per year for storage, decay in
2346 storage, treatment, or disposal of high-level nuclear waste;
2347 (b) per ton of transportation cask and high-level nuclear waste for each transfer of
2348 high-level nuclear waste;
2349 (c) per ton of storage cask and greater than class C radioactive waste for the storage,
2350 decay in storage, treatment, or disposal of greater than class C radioactive waste; and
2351 (d) per ton of transportation cask and greater than class C radioactive waste for each
2352 transfer of greater than class C radioactive waste.

2353 (3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and
2354 Hazard Compensation Account, created in Subsection 19-3-309(3).
2355 (4) The owner or operator of the facility shall pay the fees imposed under this section
2356 to the department on or before the 15th day of the month following the month in which the fee
2357 accrued.
2358 (5) Annual fees due under this part accrue on July 1 of each year and shall be paid to
2359 the department by July 15 of that year.
2360 Section 54. Section **19-4-112** is amended to read:
2361 **19-4-112. Limit on authority of department and board to control irrigation**
2362 **facilities -- Precautions relating to nonpotable water systems.**
2363 (1) Except as provided in this section and in Section 19-5-104, nothing contained in
2364 this chapter authorizes the department or board to:
2365 (a) exercise administrative control over water used solely for irrigation purposes,
2366 whether conveyed in pipes, ditches, canals, or by other facilities; or
2367 (b) adopt rules relating to the construction, operation, and maintenance of facilities for
2368 conveying irrigation water to the place of use.
2369 (2) Where nonpotable water is conveyed in pipelines under pressure in areas served by
2370 a potable water system, the following precautions shall be observed:
2371 (a) a distinctive coloring or other marking on all exposed portions of the nonpotable
2372 system shall be used;
2373 (b) potable and nonpotable water system service lines and extensions shall be
2374 completely separated and shall be installed in separate trenches;
2375 (c) all hydrants and sprinkling system control valves shall be operated by a removable
2376 key so that it is not possible to turn on the hydrant or valve without a key;
2377 (d) there shall be no cross connection between the potable and nonpotable water
2378 systems;
2379 (e) the nonpotable system [~~shall not~~] may not be extended into any building except
2380 greenhouses or other buildings for plant and animal production; and
2381 (f) no connection in the nonpotable water system shall be made except by the persons
2382 responsible for its management.
2383 Section 55. Section **19-5-102** is amended to read:

2384 **19-5-102. Definitions.**
2385 As used in this chapter:
2386 (1) "Board" means the Water Quality Board created in Section 19-1-106.
2387 (2) "Contaminant" means any physical, chemical, biological, or radiological substance
2388 or matter in water.
2389 (3) "Discharge" means the addition of any pollutant to any waters of the state.
2390 (4) "Discharge permit" means a permit issued to a person who:
2391 (a) discharges or whose activities would probably result in a discharge of pollutants
2392 into the waters of the state; or
2393 (b) generates or manages sewage sludge.
2394 (5) "Disposal system" means a system for disposing of wastes, and includes sewerage
2395 systems and treatment works.
2396 (6) "Effluent limitations" means any restrictions, requirements, or prohibitions,
2397 including schedules of compliance established under this chapter which apply to discharges.
2398 (7) "Executive secretary" means the executive secretary of the board.
2399 (8) "Point source":
2400 (a) means any discernible, confined, and discrete conveyance, including [~~but not~~
2401 ~~limited to~~] any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling
2402 stock, concentrated animal feeding operation, or vessel or other floating craft, from which
2403 pollutants are or may be discharged; and
2404 (b) does not include return flows from irrigated agriculture.
2405 (9) "Pollution" means any man-made or man-induced alteration of the chemical,
2406 physical, biological, or radiological integrity of any waters of the state, unless the alteration is
2407 necessary for the public health and safety.
2408 (10) "Publicly owned treatment works" means any facility for the treatment of
2409 pollutants owned by the state, its political subdivisions, or other public entity.
2410 (11) "Schedule of compliance" means a schedule of remedial measures, including an
2411 enforceable sequence of actions or operations leading to compliance with this chapter.
2412 (12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the
2413 treatment of municipal wastewater or domestic sewage.
2414 (13) "Sewerage system" means pipelines or conduits, pumping stations, and all other

2415 constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to
2416 a point of ultimate disposal.
2417 (14) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station,
2418 incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.
2419 (15) "Underground injection" means the subsurface emplacement of fluids by well
2420 injection.
2421 (16) "Underground wastewater disposal system" means a system for disposing of
2422 domestic wastewater discharges as defined by the board and the executive director.
2423 (17) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue,
2424 sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive
2425 materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial,
2426 municipal, and agricultural waste discharged into water.
2427 (18) "Waters of the state":
2428 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,
2429 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface
2430 and underground, natural or artificial, public or private, which are contained within, flow
2431 through, or border upon this state or any portion of the state; and
2432 (b) does not include bodies of water confined to and retained within the limits of
2433 private property, and which do not develop into or constitute a nuisance, a public health hazard,
2434 or a menace to fish or wildlife.
2435 Section 56. Section **19-5-115** is amended to read:
2436 **19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules**
2437 **of political subdivisions.**
2438 (1) The terms "knowingly," "willfully," and "criminal negligence" [~~shall mean~~] <u>are</u> as
2439 defined in Section 76-2-103.
2440 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,
2441 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not
2442 to exceed $10,000 per day of violation.
2443 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment
2444 under Section 76-3-204 and a fine not exceeding $25,000 per day who with criminal
2445 negligence:

2446 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
2447 condition or limitation included in a permit issued under Subsection 19-5-107(3);
2448 (ii) violates Section 19-5-113;
2449 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
2450 treatment works; or
2451 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.
2452 (b) A person is guilty of a third degree felony and is subject to imprisonment under
2453 Section 76-3-203 and a fine not to exceed $50,000 per day of violation who knowingly:
2454 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
2455 condition or limitation included in a permit issued under Subsection 19-5-107(3);
2456 (ii) violates Section 19-5-113;
2457 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
2458 treatment works; or
2459 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.
2460 (4) A person is guilty of a third degree felony and subject to imprisonment under
2461 Section 76-3-203 and shall be punished by a fine not exceeding $10,000 per day of violation if
2462 that person knowingly:
2463 (a) makes a false material statement, representation, or certification in any application,
2464 record, report, plan, or other document filed or required to be maintained under this chapter, or
2465 by any permit, rule, or order issued under it; or
2466 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or
2467 method required to be maintained under this chapter.
2468 (5) (a) As used in this section:
2469 (i) "Organization" means a legal entity, other than a government, established or
2470 organized for any purpose, and includes a corporation, company, association, firm, partnership,
2471 joint stock company, foundation, institution, trust, society, union, or any other association of
2472 persons.
2473 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of
2474 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
2475 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
2476 (b) A person is guilty of a second degree felony and, upon conviction, is subject to

2477 imprisonment under Section 76-3-203 and a fine of not more than $250,000 if that person:
2478 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and
2479 (ii) knows at that time that he is placing another person in imminent danger of death or
2480 serious bodily injury.
2481 (c) If a person is an organization, it shall, upon conviction of violating Subsection
2482 (5)[~~(a)~~](b), be subject to a fine of not more than $1,000,000.
2483 (d) (i) A defendant who is an individual is considered to have acted knowingly if:
2484 (A) the defendant's conduct placed another person in imminent danger of death or
2485 serious bodily injury; and
2486 (B) the defendant was aware of or believed that there was an imminent danger of death
2487 or serious bodily injury to another person.
2488 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
2489 the defendant.
2490 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
2491 knowledge, including evidence that the defendant took affirmative steps to be shielded from
2492 receiving relevant information.
2493 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the
2494 conduct charged was consented to by the person endangered and that the danger and conduct
2495 charged were reasonably foreseeable hazards of:
2496 (A) an occupation, a business, or a profession; or
2497 (B) medical treatment or medical or scientific experimentation conducted by
2498 professionally approved methods and the other person was aware of the risks involved prior to
2499 giving consent.
2500 (ii) The defendant has the burden of proof to establish any affirmative defense under
2501 this Subsection (5)(e) and [~~must~~] shall prove that defense by a preponderance of the evidence.
2502 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset
2503 which leads to simultaneous violations of more than one pollutant parameter shall be treated as
2504 a single violation.
2505 (7) (a) The board may begin a civil action for appropriate relief, including a permanent
2506 or temporary injunction, for any violation or threatened violation for which it is authorized to
2507 issue a compliance order under Section 19-5-111.

2508 (b) Actions shall be brought in the district court where the violation or threatened
2509 violation occurs.
2510 (8) (a) The attorney general is the legal advisor for the board and its executive secretary
2511 and shall defend them in all actions or proceedings brought against them.
2512 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,
2513 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action,
2514 civil or criminal, requested by the board, to abate a condition that exists in violation of, or to
2515 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the
2516 board or the executive secretary issued under this chapter.
2517 (c) The board may itself initiate any action under this section and be represented by the
2518 attorney general.
2519 (9) If any person fails to comply with a cease and desist order that is not subject to a
2520 stay pending administrative or judicial review, the board may, through its executive secretary,
2521 initiate an action for and be entitled to injunctive relief to prevent any further or continued
2522 violation of the order.
2523 (10) Any political subdivision of the state may enact and enforce ordinances or rules
2524 for the implementation of this chapter that are not inconsistent with this chapter.
2525 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected
2526 under the authority of this section shall be deposited in the General Fund.
2527 (b) The department may reimburse itself and local governments from money collected
2528 from civil penalties for extraordinary expenses incurred in environmental enforcement
2529 activities.
2530 (c) The department shall regulate reimbursements by making rules that:
2531 (i) define qualifying environmental enforcement activities; and
2532 (ii) define qualifying extraordinary expenses.
2533 Section 57. Section **19-5-116** is amended to read:
2534 **19-5-116. Limitation on effluent limitation standards for BOD, SS, Coliforms,**
2535 **and pH for domestic or municipal sewage.**
2536 Unless required to meet instream water quality standards or federal requirements
2537 established under the federal Water Pollution Control Act, the board [~~shall not~~] may not
2538 establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen

2539 Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal
2540 sewage which are more stringent than the following:
2541 (1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values
2542 determined on effluent samples collected during any 30-day period [~~shall not~~] may not exceed
2543 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.
2544 (2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on
2545 effluent samples collected during any 30-day period [~~shall not~~] may not exceed 25 mg/l, nor
2546 shall the arithmetic mean exceed 35 mg/l during any seven-day period.
2547 (3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in
2548 effluent samples collected during any 30-day period [~~shall not~~] may not exceed either 2000/100
2549 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any
2550 seven-day period [~~shall not~~] may not exceed 2500/100 ml for total coliforms or 250/100 for
2551 fecal coliforms.
2552 (4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.
2553 Section 58. Section **19-5-121** is amended to read:
2554 **19-5-121. Underground wastewater disposal systems -- Certification required to**
2555 **design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules --**
2556 **Fees.**
2557 (1) As used in this section, "maintain" does not include the pumping of an underground
2558 wastewater disposal system.
2559 (2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002,
2560 a person may not design, inspect, maintain, or conduct percolation or soil tests for an
2561 underground wastewater disposal system, without first obtaining certification from the board.
2562 (b) An individual is not required to obtain certification from the board to maintain an
2563 underground wastewater disposal system that serves a noncommercial, private residence owned
2564 by the individual or a member of the individual's family and in which the individual or a
2565 member of the individual's family resides or an employee of the individual resides without
2566 payment of rent.
2567 (c) The board shall make rules allowing an uncertified individual to conduct
2568 percolation or soil tests for an underground wastewater disposal system that serves a
2569 noncommercial, private residence owned by the individual and in which the individual resides

2570 or intends to reside, or which is intended for use by an employee of the individual without
2571 payment of rent, if the individual:
2572 (i) has the capability of properly conducting the tests; and
2573 (ii) is supervised by a certified individual when conducting the tests.
2574 (3) (a) The board shall adopt and enforce rules for the certification and recertification
2575 of individuals who design, inspect, maintain, or conduct percolation or soil tests for
2576 underground wastewater disposal systems.
2577 (b) (i) The rules shall specify requirements for education and training and the type and
2578 duration of experience necessary to obtain certification.
2579 (ii) The rules shall recognize the following in meeting the requirements for
2580 certification:
2581 (A) the experience of a contractor licensed under Title 58, Chapter 55, Utah
2582 Construction Trades Licensing Act, who has five or more years of experience installing
2583 underground wastewater disposal systems;
2584 (B) the experience of an environmental health scientist licensed under Title 58, Chapter
2585 20a, Environmental Health Scientist Act; or
2586 (C) the educational background of a professional engineer licensed under Title 58,
2587 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
2588 (iii) If eligibility for certification is based on experience, the applicant for certification
2589 [~~must~~] shall show proof of experience.
2590 (4) The department may establish fees in accordance with Section 63J-1-504 for the
2591 testing and certification of individuals who design, inspect, maintain, or conduct percolation or
2592 soil tests for underground wastewater disposal systems.
2593 Section 59. Section **19-6-108** is amended to read:
2594 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
2595 **facility or site -- Administrative and legislative approval required -- Exemptions from**
2596 **legislative and gubernatorial approval -- Time periods for review -- Information required**
2597 **-- Other conditions -- Revocation of approval -- Periodic review.**
2598 (1) For purposes of this section, the following items shall be treated as submission of a
2599 new operation plan:
2600 (a) the submission of a revised operation plan specifying a different geographic site

2601 than a previously submitted plan;
2602 (b) an application for modification of a commercial hazardous waste incinerator if the
2603 construction or the modification would increase the hazardous waste incinerator capacity above
2604 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in
2605 the operation plan application as of January 1, 1990, if no operation plan approval has been
2606 issued as of January 1, 1990;
2607 (c) an application for modification of a commercial nonhazardous solid waste
2608 incinerator if the construction of the modification would cost 50% or more of the cost of
2609 construction of the original incinerator or the modification would result in an increase in the
2610 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity
2611 or throughput that was approved in the operation plan as of January 1, 1990, or the initial
2612 approved operation plan if the initial approval is subsequent to January 1, 1990; or
2613 (d) an application for modification of a commercial nonhazardous solid or hazardous
2614 waste treatment, storage, or disposal facility, other than an incinerator, if the modification
2615 would be outside the boundaries of the property owned or controlled by the applicant, as shown
2616 in the application or approved operation plan as of January 1, 1990, or the initial approved
2617 operation plan if the initial approval is subsequent to January 1, 1990.
2618 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
2619 tonnage specified for the trial burn in the operation plan or the operation plan application if no
2620 operation plan approval has been issued as of January 1, 1990, and on annual operations of
2621 7,000 hours.
2622 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the
2623 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of
2624 hazardous waste without first submitting and receiving the approval of the executive secretary
2625 for an operation plan for that facility or site.
2626 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an
2627 operation plan may submit to the executive secretary information, a report, a plan, or other
2628 request for approval for a proposed activity under an operation plan:
2629 (I) after obtaining the consent of any other permittee who is a current owner of the
2630 facility or site; and
2631 (II) without obtaining the consent of any other permittee who is not a current owner of

2632 the facility or site.
2633 (B) The executive secretary may not:
2634 (I) withhold an approval of an operation plan requested by a permittee who is a current
2635 owner of the facility or site on the grounds that another permittee who is not a current owner of
2636 the facility or site has not consented to the request; or
2637 (II) give an approval of an operation plan requested by a permittee who is not a current
2638 owner before receiving consent of the current owner of the facility or site.
2639 (b) (i) Except for facilities that receive the following wastes solely for the purpose of
2640 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any
2641 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any
2642 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving
2643 the approval of the executive secretary for an operation plan for that facility site.
2644 (ii) Wastes referred to in Subsection (3)(b)(i) are:
2645 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste
2646 generated primarily from the combustion of coal or other fossil fuels;
2647 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or
2648 (C) cement kiln dust wastes.
2649 (c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until [~~he~~]
2650 the person receives, in addition to and subsequent to local government approval and subsequent
2651 to the approval required in Subsection (3)(a), approval by the governor and the Legislature.
2652 (ii) Facilities referred to in Subsection (3)(c)(i) are:
2653 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;
2654 and
2655 (B) except for facilities that receive the following wastes solely for the purpose of
2656 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,
2657 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas
2658 emission control waste generated primarily from the combustion of coal or other fossil fuels;
2659 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln
2660 dust wastes.
2661 (d) No person need obtain gubernatorial or legislative approval for the construction of
2662 a hazardous waste facility for which an operating plan has been approved by or submitted for

2663 approval to the executive secretary under this section before April 24, 1989, and which has
2664 been determined, on or before December 31, 1990, by the executive secretary to be complete,
2665 in accordance with state and federal requirements for operating plans for hazardous waste
2666 facilities even if a different geographic site is subsequently submitted.
2667 (e) No person need obtain gubernatorial and legislative approval for the construction of
2668 a commercial nonhazardous solid waste disposal facility for which an operation plan has been
2669 approved by or submitted for approval to the executive secretary under this section on or before
2670 January 1, 1990, and which, on or before December 31, 1990, the executive secretary
2671 determines to be complete, in accordance with state and federal requirements applicable to
2672 operation plans for nonhazardous solid waste facilities.
2673 (f) Any person owning or operating a facility or site on or before November 19, 1980,
2674 who has given timely notification as required by Section 3010 of the Resource Conservation
2675 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed
2676 hazardous waste plan under this section for that facility or site, may continue to operate that
2677 facility or site without violating this section until the plan is approved or disapproved under
2678 this section.
2679 (g) (i) The executive secretary shall suspend acceptance of further applications for a
2680 commercial nonhazardous solid or hazardous waste facility upon a finding that [~~he~~] the
2681 executive secretary cannot adequately oversee existing and additional facilities for permit
2682 compliance, monitoring, and enforcement.
2683 (ii) The executive secretary shall report any suspension to the Natural Resources,
2684 Agriculture, and Environment Interim Committee.
2685 (4) The executive secretary shall review each proposed nonhazardous solid or
2686 hazardous waste operation plan to determine whether that plan complies with the provisions of
2687 this part and the applicable rules of the board.
2688 (5) (a) If the facility is a class I or class II facility, the executive secretary shall approve
2689 or disapprove that plan within 270 days from the date it is submitted.
2690 (b) Within 60 days after receipt of the plans, specifications, or other information
2691 required by this section for a class I or II facility, the executive secretary shall determine
2692 whether the plan is complete and contains all information necessary to process the plan for
2693 approval.

2694 (c) (i) If the plan for a class I or II facility is determined to be complete, the executive
2695 secretary shall issue a notice of completeness.
2696 (ii) If the plan is determined by the executive secretary to be incomplete, [~~he~~] the
2697 executive secretary shall issue a notice of deficiency, listing the additional information to be
2698 provided by the owner or operator to complete the plan.
2699 (d) The executive secretary shall review information submitted in response to a notice
2700 of deficiency within 30 days after receipt.
2701 (e) The following time periods may not be included in the 270 day plan review period
2702 for a class I or II facility:
2703 (i) time awaiting response from the owner or operator to requests for information
2704 issued by the executive secretary;
2705 (ii) time required for public participation and hearings for issuance of plan approvals;
2706 and
2707 (iii) time for review of the permit by other federal or state government agencies.
2708 (6) (a) If the facility is a class III or class IV facility, the executive secretary shall
2709 approve or disapprove that plan within 365 days from the date it is submitted.
2710 (b) The following time periods may not be included in the 365 day review period:
2711 (i) time awaiting response from the owner or operator to requests for information
2712 issued by the executive secretary;
2713 (ii) time required for public participation and hearings for issuance of plan approvals;
2714 and
2715 (iii) time for review of the permit by other federal or state government agencies.
2716 (7) If, within 365 days after receipt of a modification plan or closure plan for any
2717 facility, the executive secretary determines that the proposed plan, or any part of it, will not
2718 comply with applicable rules, the executive secretary shall issue an order prohibiting any action
2719 under the proposed plan for modification or closure in whole or in part.
2720 (8) Any person who owns or operates a facility or site required to have an approved
2721 hazardous waste operation plan under this section and who has pending a permit application
2722 before the United States Environmental Protection Agency shall be treated as having an
2723 approved plan until final administrative disposition of the permit application is made under this
2724 section, unless the board determines that final administrative disposition of the application has

2725 not been made because of the failure of the owner or operator to furnish any information
2726 requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource
2727 Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).
2728 (9) No proposed nonhazardous solid or hazardous waste operation plan may be
2729 approved unless it contains the information that the board requires, including:
2730 (a) estimates of the composition, quantities, and concentrations of any hazardous waste
2731 identified under this part and the proposed treatment, storage, or disposal of it;
2732 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or
2733 disposal of hazardous waste will not be done in a manner that may cause or significantly
2734 contribute to an increase in mortality, an increase in serious irreversible or incapacitating
2735 reversible illness, or pose a substantial present or potential hazard to human health or the
2736 environment;
2737 (c) consistent with the degree and duration of risks associated with the disposal of
2738 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,
2739 evidence of financial responsibility in whatever form and amount that the executive secretary
2740 determines is necessary to insure continuity of operation and that upon abandonment, cessation,
2741 or interruption of the operation of the facility or site, all reasonable measures consistent with
2742 the available knowledge will be taken to insure that the waste subsequent to being treated,
2743 stored, or disposed of at the site or facility will not present a hazard to the public or the
2744 environment;
2745 (d) evidence that the personnel employed at the facility or site have education and
2746 training for the safe and adequate handling of nonhazardous solid or hazardous waste;
2747 (e) plans, specifications, and other information that the executive secretary considers
2748 relevant to determine whether the proposed nonhazardous solid or hazardous waste operation
2749 plan will comply with this part and the rules of the board; and
2750 (f) compliance schedules, where applicable, including schedules for corrective action
2751 or other response measures for releases from any solid waste management unit at the facility,
2752 regardless of the time the waste was placed in the unit.
2753 (10) The executive secretary may not approve a commercial nonhazardous solid or
2754 hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains
2755 the information required by the board, including:

2756 (a) evidence that the proposed commercial facility has a proven market of
2757 nonhazardous solid or hazardous waste, including:
2758 (i) information on the source, quantity, and price charged for treating, storing, and
2759 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;
2760 (ii) a market analysis of the need for a commercial facility given existing and potential
2761 generation of nonhazardous solid or hazardous waste in the state and regionally; and
2762 (iii) a review of other existing and proposed commercial nonhazardous solid or
2763 hazardous waste facilities regionally and nationally that would compete for the treatment,
2764 storage, or disposal of the nonhazardous solid or hazardous waste;
2765 (b) a description of the public benefits of the proposed facility, including:
2766 (i) the need in the state for the additional capacity for the management of nonhazardous
2767 solid or hazardous waste;
2768 (ii) the energy and resources recoverable by the proposed facility;
2769 (iii) the reduction of nonhazardous solid or hazardous waste management methods,
2770 which are less suitable for the environment, that would be made possible by the proposed
2771 facility; and
2772 (iv) whether any other available site or method for the management of hazardous waste
2773 would be less detrimental to the public health or safety or to the quality of the environment;
2774 and
2775 (c) compliance history of an owner or operator of a proposed commercial
2776 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be
2777 applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan
2778 decision, including any plan conditions.
2779 (11) The executive secretary may not approve a commercial nonhazardous solid or
2780 hazardous waste facility operation plan unless based on the application, and in addition to the
2781 determination required in Subsections (9) and (10), the executive secretary determines that:
2782 (a) the probable beneficial environmental effect of the facility to the state outweighs
2783 the probable adverse environmental effect; and
2784 (b) there is a need for the facility to serve industry within the state.
2785 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be
2786 revoked, in whole or in part, if the person to whom approval of the plan has been given fails to

2787 comply with that plan.
2788 (13) The executive secretary shall review all approved nonhazardous solid and
2789 hazardous waste operation plans at least once every five years.
2790 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste
2791 facilities in existence or to applications filed or pending in the department prior to April 24,
2792 1989, that are determined by the executive secretary on or before December 31, 1990, to be
2793 complete, in accordance with state and federal requirements applicable to operation plans for
2794 hazardous waste facilities.
2795 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous
2796 solid waste facility in existence or to an application filed or pending in the department prior to
2797 January 1, 1990, that is determined by the executive secretary, on or before December 31,
2798 1990, to be complete in accordance with state and federal requirements applicable to operation
2799 plans for nonhazardous solid waste facilities.
2800 (16) Nonhazardous solid waste generated outside of this state that is defined as
2801 hazardous waste in the state where it is generated and which is received for disposal in this
2802 state [~~shall not~~] may not be disposed of at a nonhazardous waste disposal facility owned and
2803 operated by local government or a facility under contract with a local government solely for
2804 disposal of nonhazardous solid waste generated within the boundaries of the local government,
2805 unless disposal is approved by the executive secretary.
2806 (17) This section may not be construed to exempt any facility from applicable
2807 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
2808 2114.
2809 Section 60. Section **19-6-116** is amended to read:
2810 **19-6-116. Application of part subject to state assumption of primary**
2811 **responsibility from federal government -- Authority of political subdivisions.**
2812 (1) The requirements of this part applicable to the generation, treatment, storage, or
2813 disposal of hazardous waste, and the rules adopted under this part, [~~shall not~~] do not take effect
2814 until this state is qualified to assume, and does assume, primacy from the federal government
2815 for the control of hazardous wastes.
2816 (2) This part does not alter the authority of political subdivisions of the state to control
2817 solid and hazardous wastes within their local jurisdictions so long as any local laws,

2818 ordinances, or rules are not inconsistent with this part or the rules of the board.
2819 Section 61. Section **19-6-202** is amended to read:
2820 **19-6-202. Definitions.**
2821 As used in this part:
2822 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
2823 19-1-106.
2824 (2) "Disposal" means the final disposition of hazardous wastes into or onto the lands,
2825 waters, and air of this state.
2826 (3) "Hazardous wastes" means wastes as defined in Section 19-6-102.
2827 (4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site
2828 used or intended to be used for the treatment, storage, or disposal of hazardous waste materials,
2829 including [~~but not limited to~~] physical, chemical, or thermal processing systems, incinerators,
2830 and secure landfills.
2831 (5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.
2832 (6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the
2833 board pursuant to Sections 19-6-204 and 19-6-205.
2834 (7) "Storage" means the containment of hazardous wastes for a period of more than 90
2835 days.
2836 (8) "Treatment" means any method, technique, or process designed to change the
2837 physical, chemical, or biological character or composition of any hazardous waste to neutralize
2838 or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to
2839 another usable material, or reduced in volume and suitable for ultimate disposal.
2840 Section 62. Section **19-6-203** is amended to read:
2841 **19-6-203. Other provisions relating to hazardous waste.**
2842 This part [~~shall not~~] may not be construed to supersede any other state or local law
2843 relating to hazardous waste, except as otherwise provided in Section 19-6-207.
2844 Section 63. Section **19-6-205** is amended to read:
2845 **19-6-205. Siting plan -- Procedure for adoption -- Review -- Effect.**
2846 (1) After completion of the guidelines, the board shall prepare and publish a
2847 preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the
2848 board in accordance with Subsection (2) and shall be based upon the guidelines adopted under

2849 Section 19-6-204 and be published within one year after adoption of the guidelines.
2850 (2) (a) After completion of its guidelines, the board shall publish notice of intent to
2851 prepare a siting plan. The notice shall invite all interested persons to nominate sites for
2852 inclusion in the siting plan. It shall be published at least twice in not less than two newspapers
2853 with statewide circulation and shall also be sent to any person, business, or other organization
2854 that has notified the board of an interest or involvement in hazardous waste management
2855 activities.
2856 (b) Nominations for the location of hazardous waste sites shall be accepted by the
2857 board for a period of 120 days after the date of first publication of notice. Nominations may
2858 include a description of the site or sites suggested or may simply suggest a general area. In
2859 addition, any nomination may provide data and reasons in support of inclusion of the site
2860 nominated.
2861 (c) The board, in cooperation with other state agencies and private sources, shall then
2862 prepare an inventory of:
2863 (i) the hazardous wastes generated in the state;
2864 (ii) those likely to be generated in the future;
2865 (iii) those being generated in other states that are likely to be treated, disposed of, or
2866 stored in the state;
2867 (iv) the sites within the state currently being used for hazardous waste and those
2868 suggested through the nomination process;
2869 (v) the treatment, storage, and disposal processes and management practices that are
2870 required to comply with Section 19-6-108; and
2871 (vi) an estimate of the public and private costs for meeting the long-term demand for
2872 hazardous waste treatment, disposal, and storage facilities.
2873 (d) (i) After the hazardous waste inventory and cost estimate are complete, the board,
2874 with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical
2875 distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment,
2876 and storage for the next 25 years.
2877 (ii) The board [~~shall not~~] may not exclude any area of the state from consideration in
2878 the selection of potential sites but, to the maximum extent possible, shall give preference to
2879 sites located in areas already dedicated through zoning or other land use regulations to

2880 industrial use or to areas located near industrial uses. However, the board shall give
2881 consideration to excluding an area designated for disposal of uranium mill tailings or for
2882 disposal of nuclear wastes unless the proposed disposal site is approved by the affected county
2883 through its county executive and county legislative body.
2884 (e) The board shall also analyze and identify areas of the state where, due to the
2885 concentration of industrial waste generation processes or to favorable geology or hydrology, the
2886 construction and operation of hazardous waste treatment, disposal, and storage facilities
2887 appears to be technically, environmentally, and economically feasible.
2888 (3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before
2889 adoption, be distributed to all units of local government located near existing or proposed sites.
2890 (b) Notice of the availability of the preliminary siting plan for examination shall be
2891 published at least twice in two newspapers, if available, with general circulation in the areas of
2892 the state that potentially will be affected by the plan.
2893 (c) The board shall also issue a statewide news release that informs persons where
2894 copies of the preliminary siting plan may be inspected or purchased at cost.
2895 (d) After release of the preliminary siting plan, the board shall hold not less than two
2896 public hearings in different areas of the state affected by the proposed siting plan to allow local
2897 officials and other interested persons to express their views and submit information relevant to
2898 the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release
2899 of the plan. Within 30 days after completion of the hearings, the board shall prepare and make
2900 available for public inspection a summary of public comments.
2901 (4) (a) The board, between 30 and 60 days after publication of the public comments,
2902 shall prepare a final siting plan.
2903 (b) The final siting plan shall be widely distributed to members of the public.
2904 (c) The board, at any time between 30 and 60 days after release of the final plan, on its
2905 own initiative or that of interested parties, shall hold not less than two public hearings in each
2906 area of the state affected by the final plan to allow local officials and other interested persons to
2907 express their views.
2908 (d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with
2909 modification, or reject the final siting plan.
2910 (5) (a) Any person adversely affected by the board's decision may seek judicial review

2911 of the decision by filing a petition for review with the district court for Salt Lake County within
2912 90 days after the board's decision.
2913 (b) Judicial review may be had, however, only on the grounds that the board violated
2914 the procedures set forth in this section, that it acted without or in excess of its powers, or that
2915 its actions were arbitrary or capricious and not based on substantial evidence.
2916 (6) If the final siting plan is adopted, the board shall cause it to be published.
2917 (7) After publication of the final siting plan, the board shall engage in a continuous
2918 monitoring and review process to ensure that the long-range needs of hazardous waste
2919 producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An
2920 annual review of the adequacy of the plan shall be conducted and published by the board.
2921 (8) (a) If necessary, the board may amend the siting plan to provide additional sites or
2922 delete sites which are no longer suitable.
2923 (b) Before any plan amendment adding or deleting a site is adopted, the board, upon
2924 not less than 20 days' public notice, shall hold at least one public hearing in the area where the
2925 affected site is located.
2926 (9) After adoption of the final plan, an applicant for approval of a plan to construct and
2927 operate a hazardous waste treatment, storage, and disposal facility who seeks protection under
2928 this part shall select a site contained on the final site plan.
2929 (10) Nothing in this part, however, shall be construed to prohibit the construction and
2930 operation of an approved hazardous waste treatment, storage, and disposal facility at a site
2931 which is not included within the final site plan, but such a facility is not entitled to the
2932 protections afforded under this part.
2933 Section 64. Section **19-6-413** is amended to read:
2934 **19-6-413. Tank tightness test -- Actions required after testing.**
2935 (1) The owner or operator of any petroleum storage tank registered [~~prior to~~] before
2936 July 1, 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test
2937 conducted:
2938 (a) on or after September 1, 1989, and [~~prior to~~] before January 1, 1990, if the test
2939 meets requirements set by rule regarding tank tightness tests that were applicable during that
2940 period; or
2941 (b) on or after January 1, 1990, and [~~prior to~~] before July 1, 1991.

2942 (2) The owner or operator of any petroleum storage tank registered on or after July 1,
2943 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test
2944 conducted within the six months before the tank was registered or within 60 days after the date
2945 the tank was registered.
2946 (3) If the tank test performed under Subsection (1) or (2) shows no release of
2947 petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the
2948 executive secretary at the same time the owner or operator submits the test results, stating that
2949 under customary business inventory practices standards, the owner or operator is not aware of
2950 any release of petroleum from the tank.
2951 (4) (a) If the tank test shows a release of petroleum from the petroleum storage tank,
2952 the owner or operator of the tank shall:
2953 (i) correct the problem; and
2954 (ii) submit evidence of the correction to the executive secretary.
2955 (b) When the executive secretary receives evidence from an owner or operator of a
2956 petroleum storage tank that the problem with the tank has been corrected, the executive
2957 secretary shall:
2958 (i) approve or disapprove the correction; and
2959 (ii) notify the owner or operator that the correction has been approved or disapproved.
2960 (5) The executive secretary shall review the results of the tank tightness test to
2961 determine compliance with this part and any rules adopted under the authority of Section
2962 19-6-403.
2963 (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D,
2964 to perform release detection on the tank, the owner or operator shall submit the results of the
2965 tank tests in compliance with 40 C.F.R., Part 280, Subpart D.
2966 Section 65. Section **19-6-714** is amended to read:
2967 **19-6-714. Recycling fee on sale of oil.**
2968 (1) On and after October 1, 1993, a recycling fee of $.04 per quart or $.16 per gallon is
2969 imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The
2970 lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.
2971 (2) A fee under this section [~~shall not~~] may not be collected on sales of lubricating oil:
2972 (a) shipped outside the state;

2973 (b) purchased in five-gallon or smaller containers and used solely in underground
2974 mining operations; or
2975 (c) in bulk containers of 55 gallons or more.
2976 (3) This fee is in addition to all other state, county, or municipal fees and taxes
2977 imposed on the sale of lubricating oil.
2978 (4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply
2979 to this part.
2980 (5) The commission may make rules to implement and enforce the provisions of this
2981 section.
2982 Section 66. Section **19-6-814** is amended to read:
2983 **19-6-814. Local health department responsibility.**
2984 (1) A local health department that has received an application for partial
2985 reimbursement from a recycler shall within 15 calendar days after receiving the application:
2986 (a) review the application for completeness;
2987 (b) conduct an on-site investigation of the recycler's waste tire use if the application is
2988 the initial application of the recycler; and
2989 (c) submit the recycler's application for partial reimbursement together with a brief
2990 written report of the results of the investigation and the dollar amount approved for payment to
2991 the Division of Finance.
2992 (2) If the local health department approves a dollar amount for partial reimbursement
2993 which is less than the amount requested by the recycler, the local health department [~~must~~]
2994 shall submit its written report of the investigation and recommendation to the recycler at least
2995 five days prior to submitting the report and recommendation to the Division of Finance.
2996 Section 67. Section **19-9-105** is amended to read:
2997 **19-9-105. Powers of authority.**
2998 The authority is a body corporate and politic that may:
2999 (1) sue and be sued in its own name;
3000 (2) have a seal and alter the seal at will;
3001 (3) borrow money and issue obligations, including refunding obligations, and provide
3002 for the rights of holders of those obligations;
3003 (4) establish hazardous waste treatment, disposal, or storage surcharge schedules for

3004 facilities operated by, or under authority of, the authority, and require all private facility
3005 operators who contract with the authority to collect fees for all hazardous waste received for
3006 treatment, disposal, or storage by those private facilities;
3007 (5) promulgate rules pursuant to Title 63G, Chapter 3, Utah Administrative
3008 Rulemaking Act, governing the exercise of its powers and fulfillment of its purposes;
3009 (6) enter into contracts and leases and execute all instruments necessary, convenient, or
3010 desirable;
3011 (7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in
3012 property that is necessary, convenient, or desirable to carry out the purposes of this chapter, and
3013 sell, lease, transfer, and dispose of any property or interest in property at any time required in
3014 the exercise of its power, including[~~, but not limited to,~~] the sale, transfer, or disposal of any
3015 materials, substances, or sources or forms of energy derived from any activity engaged in by
3016 the authority;
3017 (8) contract with experts, advisers, consultants, and agents for needed services;
3018 (9) appoint officers and employees required for the performance of its duties, and fix
3019 and determine their qualifications and duties;
3020 (10) make, or contract for, plans, surveys, and studies necessary, convenient, or
3021 desirable to effectuate its purposes and powers and prepare any recommendations with respect
3022 to those plans, surveys, or studies;
3023 (11) receive and accept aid or contributions from any source, including the United
3024 States or the state, in the form of money, property, labor, or other things of value to be held,
3025 used, and applied to carry out the purposes of this chapter, subject to the conditions imposed
3026 upon that aid or contributions consistent with this chapter;
3027 (12) enter into agreements with any department, agency, or instrumentality of the
3028 United States or this state, or any financial institution, or contractor for the purpose of leasing
3029 and operating any facility;
3030 (13) consent to the modification of any obligation with the holder of that obligation, to
3031 the extent permitted by the obligation, relating to rates of interest or to the time and payment of
3032 any installment of principal or interest, or to the modification of any other contract, mortgage,
3033 mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;
3034 (14) pledge revenues from any hazardous waste treatment, disposal, and storage facility

3035 to secure payment of any obligations relating to that facility, including interest on, and
3036 redemption of, those obligations;
3037 (15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge
3038 agreements, assignments, security agreements, and financing statements that encumber
3039 property acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the
3040 sale of such obligations;
3041 (16) exercise the power of eminent domain;
3042 (17) do all other things necessary to comply with the requirements of 42 U.S.C.
3043 Sections 6901-6986, the Resource Conservation and Recovery Act of 1976, and this part;
3044 (18) contract for the construction, operation, and maintenance of hazardous waste
3045 treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts
3046 thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous
3047 waste, subject to approval by the board; and
3048 (19) exercise any other powers or duties necessary or appropriate to carry out and
3049 effectuate this chapter.
3050 Section 68. Section **19-9-109** is amended to read:
3051 **19-9-109. Security for obligations -- Provisions of security instruments.**
3052 (1) The principal and interest on any obligation issued pursuant to this chapter shall be
3053 secured by:
3054 (a) a pledge and assignment of the proceeds earned by the facility built and acquired
3055 with the proceeds of the obligations;
3056 (b) a mortgage or trust deed on the facility built and acquired with the proceeds from
3057 the obligations; and
3058 (c) such other security on the facility as is deemed most advantageous by the authority.
3059 (2) Obligations authorized for issuance under this chapter and any mortgage or other
3060 security given to secure such obligations may contain any provisions customarily contained in
3061 security instruments, including[~~, but not limited to~~]:
3062 (a) the fixing and collection of fees from the facility;
3063 (b) the maintenance of insurance on the facility;
3064 (c) the creation and maintenance of special funds to receive revenues earned by the
3065 facility; and

3066 (d) the rights and remedies available to obligation holders in the event of default.
3067 (3) All mortgages, trust deeds, security agreements, or trust indentures on a facility
3068 shall provide, in the event of foreclosure, that no deficiency judgment may be entered against
3069 the authority, the state, or any of the state's political subdivisions.
3070 (4) Any mortgage or other security instrument securing such obligations may provide
3071 that in the event of a default in the payment of principal or interest or in the performance of any
3072 agreement, that payment or performance may be enforced by the appointment of a receiver with
3073 power to charge and collect fees and to apply the revenues from the facility in accordance with
3074 the provisions of the security instrument.
3075 (5) Any mortgage or other security instrument made pursuant to this chapter may also
3076 provide that in the event of default in payment or breach of a condition, that the mortgage may
3077 be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under
3078 the mortgage or the holder of any obligation secured by such mortgage may, if the highest
3079 bidder, purchase the security at foreclosure sale.
3080 Section 69. Section **19-10-104** is amended to read:
3081 **19-10-104. Requirements for creation of institutional control.**
3082 An environmental institutional control shall:
3083 (1) be in writing and shall be recorded by the owner of the real property in the county
3084 recorder's office in the county where the real property is located;
3085 (2) contain a legal description of the area of the real property that is subject to the
3086 institutional control;
3087 (3) include a statement documenting any requirements for maintenance of the
3088 institutional control, including a description of the institutional control and the reason it must
3089 remain in place to protect the public health, safety, or welfare, or the environment;
3090 (4) include a statement that the institutional control runs with the land and is binding
3091 on all successors in interest unless or until the institutional control is removed as provided in
3092 Section 19-10-105;
3093 (5) include a statement acknowledging the department's right of access to the property
3094 at all reasonable times to verify that the institutional controls are being maintained;
3095 (6) include a statement explaining how the institutional control can be modified or
3096 terminated and stating that if any person desires to cancel or modify the institutional control in

3097 the future, the person [~~must~~] shall obtain prior written approval from the executive director
3098 pursuant to this chapter;
3099 (7) include a notarized signature of the executive director indicating approval of the
3100 environmental institutional control; and
3101 (8) include the notarized signature of the property owner indicating approval of the
3102 environmental institutional control.
3103 Section 70. Section **20A-1-401** is amended to read:
3104 **20A-1-401. Interpretation of election laws -- Computation of time.**
3105 (1) Courts and election officers shall construe the provisions of [~~Title 20A, Election~~
3106 ~~Code,~~] this title liberally to carry out the intent of this title.
3107 (2) Except as provided under Subsection (3), Saturdays, Sundays, and holidays shall be
3108 included in all computations of days made under the provisions of [~~Title 20A, Election Code~~]
3109 this title.
3110 (3) Unless otherwise specifically provided for under this title [~~20A~~]:
3111 (a) when computing any number of days before or after a specified date or event under
3112 this [~~Title 20A~~] title, the specified date or day of the event [~~shall not be~~] is not included in the
3113 count; and
3114 (b) (i) if the commencement date of a time period preceding a specified date or event
3115 falls on a Saturday, Sunday, or legal holiday, the following business day shall be used;
3116 (ii) if the last day of a time period following a specified date or event falls on a
3117 Saturday, Sunday, or legal holiday, the time period shall be extended to the following business
3118 day; and
3119 (iii) if a deadline that falls before or after a specified date or event falls on a Saturday,
3120 Sunday, or legal holiday, the deadline shall be considered to fall on the following business day.
3121 Section 71. Section **20A-1-508** is amended to read:
3122 **20A-1-508. Midterm vacancies in county elected offices.**
3123 (1) As used in this section:
3124 (a) "County offices" includes the county executive, members of the county legislative
3125 body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county
3126 recorder, the county surveyor, and the county assessor.
3127 (b) "County offices" does not mean the offices of president and vice president of the

3128 United States, United States senators and representatives, members of the Utah Legislature,
3129 state constitutional officers, county attorneys, district attorneys, and judges.
3130 (2) (a) Until a replacement is selected as provided in this section and has qualified, the
3131 county legislative body shall appoint an interim replacement to fill the vacant office by
3132 following the procedures and requirements of this Subsection (2).
3133 (b) (i) To appoint an interim replacement, the county legislative body shall give notice
3134 of the vacancy to the county central committee of the same political party of the prior office
3135 holder and invite that committee to submit the names of three nominees to fill the vacancy.
3136 (ii) That county central committee shall, within 30 days, submit the names of three
3137 nominees for the interim replacement to the county legislative body.
3138 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint
3139 one of those nominees to serve out the unexpired term.
3140 (c) (i) If the county legislative body fails to appoint an interim replacement to fill the
3141 vacancy within 45 days, the county clerk shall send to the governor a letter that:
3142 (A) informs the governor that the county legislative body has failed to appoint a
3143 replacement within the statutory time period; and
3144 (B) contains the list of nominees submitted by the party central committee.
3145 (ii) The governor shall appoint an interim replacement from that list of nominees to fill
3146 the vacancy within 30 days after receipt of the letter.
3147 (d) A person appointed as interim replacement under this Subsection (2) shall hold
3148 office until their successor is elected and has qualified.
3149 (3) (a) The requirements of this Subsection (3) apply to all county offices that become
3150 vacant if:
3151 (i) the vacant office has an unexpired term of two years or more; and
3152 (ii) the vacancy occurs after the election at which the person was elected but before
3153 April 10 of the next even-numbered year.
3154 (b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk
3155 shall notify the public and each registered political party that the vacancy exists.
3156 (ii) All persons intending to become candidates for the vacant office shall:
3157 (A) file a declaration of candidacy according to the procedures and requirements of
3158 Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

3159 (B) if nominated as a party candidate or qualified as an independent or write-in
3160 candidate under Chapter 8, Political Party Formation and Procedures, run in the regular general
3161 election.
3162 (4) (a) The requirements of this Subsection (4) apply to all county offices that become
3163 vacant if:
3164 (i) the vacant office has an unexpired term of two years or more; and
3165 (ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50
3166 days before the regular primary election.
3167 (b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk
3168 shall notify the public and each registered political party that:
3169 (A) the vacancy exists; and
3170 (B) identifies the date and time by which a person interested in becoming a candidate
3171 [~~must~~] shall file a declaration of candidacy.
3172 (ii) All persons intending to become candidates for the vacant offices shall, within five
3173 days after the date that the notice is made, ending at the close of normal office hours on the
3174 fifth day, file a declaration of candidacy for the vacant office as required by Chapter 9, Part 2,
3175 Candidate Qualifications and Declarations of Candidacy.
3176 (iii) The county central committee of each party shall:
3177 (A) select a candidate or candidates from among those qualified candidates who have
3178 filed declarations of candidacy; and
3179 (B) certify the name of the candidate or candidates to the county clerk at least 35 days
3180 before the regular primary election.
3181 (5) (a) The requirements of this Subsection (5) apply to all county offices that become
3182 vacant:
3183 (i) if the vacant office has an unexpired term of two years or more; and
3184 (ii) when 50 days or less remain before the regular primary election but more than 50
3185 days remain before the regular general election.
3186 (b) When the conditions established in Subsection (5)(a) are met, the county central
3187 committees of each political party registered under this title that wishes to submit a candidate
3188 for the office shall summarily certify the name of one candidate to the county clerk for
3189 placement on the regular general election ballot.

3190 (6) (a) The requirements of this Subsection (6) apply to all county offices that become
3191 vacant:
3192 (i) if the vacant office has an unexpired term of less than two years; or
3193 (ii) if the vacant office has an unexpired term of two years or more but 50 days or less
3194 remain before the next regular general election.
3195 (b) (i) When the conditions established in Subsection (6)(a) are met, the county
3196 legislative body shall give notice of the vacancy to the county central committee of the same
3197 political party as the prior office holder and invite that committee to submit the names of three
3198 nominees to fill the vacancy.
3199 (ii) That county central committee shall, within 30 days, submit the names of three
3200 nominees to fill the vacancy to the county legislative body.
3201 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint
3202 one of those nominees to serve out the unexpired term.
3203 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy within
3204 45 days, the county clerk shall send to the governor a letter that:
3205 (A) informs the governor that the county legislative body has failed to appoint a person
3206 to fill the vacancy within the statutory time period; and
3207 (B) contains the list of nominees submitted by the party central committee.
3208 (ii) The governor shall appoint a person to fill the vacancy from that list of nominees to
3209 fill the vacancy within 30 days after receipt of the letter.
3210 (d) A person appointed to fill the vacancy under this Subsection (6) shall hold office
3211 until their successor is elected and has qualified.
3212 (7) Except as otherwise provided by law, the county legislative body may appoint
3213 replacements to fill all vacancies that occur in those offices filled by appointment of the county
3214 legislative body.
3215 (8) Nothing in this section prevents or prohibits independent candidates from filing a
3216 declaration of candidacy for the office within the same time limits.
3217 (9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a
3218 county office shall serve for the remainder of the unexpired term of the person who created the
3219 vacancy and until a successor is elected and qualified.
3220 (b) Nothing in this section may be construed to contradict or alter the provisions of

3221 Section 17-16-6.
3222 Section 72. Section **20A-1-509.1** is amended to read:
3223 **20A-1-509.1. Procedure for filling midterm vacancy in county or district with 15**
3224 **or more attorneys.**
3225 (1) When a vacancy occurs in the office of county or district attorney in a county or
3226 district having 15 or more attorneys who are licensed active members in good standing with the
3227 Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.
3228 (2) (a) The requirements of this Subsection (2) apply when the office of county
3229 attorney or district attorney becomes vacant and:
3230 (i) the vacant office has an unexpired term of two years or more; and
3231 (ii) the vacancy occurs before the third Friday in March of the even-numbered year.
3232 (b) When the conditions established in Subsection (2)(a) are met, the county clerk shall
3233 notify the public and each registered political party that the vacancy exists.
3234 (c) All persons intending to become candidates for the vacant office shall:
3235 (i) file a declaration of candidacy according to the procedures and requirements of
3236 [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy;
3237 (ii) if nominated as a party candidate or qualified as an independent or write-in
3238 candidate under [~~Title 20A,~~] Chapter 9, Candidate Qualifications and Nominating Procedures,
3239 run in the regular general election; and
3240 (iii) if elected, complete the unexpired term of the person who created the vacancy.
3241 (d) If the vacancy occurs after the second Friday in March and before the third Friday
3242 in March, the time for filing a declaration of candidacy under Section 20A-9-202 shall be
3243 extended until seven days after the county clerk gives notice under Subsection (2)(b), but no
3244 later than the fourth Friday in March.
3245 (3) (a) The requirements of this Subsection (3) apply when the office of county
3246 attorney or district attorney becomes vacant and:
3247 (i) the vacant office has an unexpired term of two years or more; and
3248 (ii) the vacancy occurs after the third Friday in March of the even-numbered year but
3249 more than 50 days before the regular primary election.
3250 (b) When the conditions established in Subsection (3)(a) are met, the county clerk
3251 shall:

3252 (i) notify the public and each registered political party that the vacancy exists; and
3253 (ii) identify the date and time by which a person interested in becoming a candidate
3254 [~~must~~] shall file a declaration of candidacy.
3255 (c) All persons intending to become candidates for the vacant office shall:
3256 (i) within five days after the date that the notice is made, ending at at the close of
3257 normal office hours on the fifth day, file a declaration of candidacy for the vacant office as
3258 required by [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and [~~Nominating~~
3259 ~~Procedures~~] Declarations of Candidacy; and
3260 (ii) if elected, complete the unexpired term of the person who created the vacancy.
3261 (d) The county central committee of each party shall:
3262 (i) select a candidate or candidates from among those qualified candidates who have
3263 filed declarations of candidacy; and
3264 (ii) certify the name of the candidate or candidates to the county clerk at least 35 days
3265 before the regular primary election.
3266 (4) (a) The requirements of this Subsection (4) apply when the office of county
3267 attorney or district attorney becomes vacant and:
3268 (i) the vacant office has an unexpired term of two years or more; and
3269 (ii) 50 days or less remain before the regular primary election but more than 50 days
3270 remain before the regular general election.
3271 (b) When the conditions established in Subsection (4)(a) are met, the county central
3272 committees of each registered political party that wish to submit a candidate for the office shall
3273 summarily certify the name of one candidate to the county clerk for placement on the regular
3274 general election ballot.
3275 (c) The candidate elected shall complete the unexpired term of the person who created
3276 the vacancy.
3277 (5) (a) The requirements of this Subsection (5) apply when the office of county
3278 attorney or district attorney becomes vacant and:
3279 (i) the vacant office has an unexpired term of less than two years; or
3280 (ii) the vacant office has an unexpired term of two years or more but 50 days or less
3281 remain before the next regular general election.
3282 (b) When the conditions established in Subsection (5)(a) are met, the county legislative

3283 body shall give notice of the vacancy to the county central committee of the same political
3284 party of the prior officeholder and invite that committee to submit the names of three nominees
3285 to fill the vacancy.
3286 (c) That county central committee shall, within 30 days of receiving notice from the
3287 county legislative body, submit to the county legislative body the names of three nominees to
3288 fill the vacancy.
3289 (d) The county legislative body shall, within 45 days after the vacancy occurs, appoint
3290 one of those nominees to serve out the unexpired term.
3291 (e) If the county legislative body fails to appoint a person to fill the vacancy within 45
3292 days, the county clerk shall send to the governor a letter that:
3293 (i) informs the governor that the county legislative body has failed to appoint a person
3294 to fill the vacancy within the statutory time period; and
3295 (ii) contains the list of nominees submitted by the party central committee.
3296 (f) The governor shall appoint a person to fill the vacancy from that list of nominees
3297 within 30 days after receipt of the letter.
3298 (g) A person appointed to fill the vacancy under Subsection (5) shall complete the
3299 unexpired term of the person who created the vacancy.
3300 (6) Nothing in this section prevents or prohibits independent candidates from filing a
3301 declaration of candidacy for the office within the required time limits.
3302 Section 73. Section **20A-1-703** is amended to read:
3303 **20A-1-703. Proceedings by registered voter.**
3304 (1) Any registered voter who has information that any provisions of this title have been
3305 violated by any candidate for whom the registered voter had the right to vote, by any personal
3306 campaign committee of that candidate, by any member of that committee, or by any election
3307 official, may file a verified petition with the lieutenant governor.
3308 (2) (a) The lieutenant governor shall gather information and determine if a special
3309 investigation is necessary.
3310 (b) If the lieutenant governor determines that a special investigation is necessary, the
3311 lieutenant governor shall refer the information to the attorney general, who shall:
3312 (i) bring a special proceeding to investigate and determine whether or not there has
3313 been a violation; and

3314 (ii) appoint special counsel to conduct that proceeding on behalf of the state.
3315 (3) If it appears from the petition or otherwise that sufficient evidence is obtainable to
3316 show that there is probable cause to believe that a violation has occurred, the attorney general
3317 shall:
3318 (a) grant leave to bring the proceeding; and
3319 (b) appoint special counsel to conduct the proceeding.
3320 (4) (a) If leave is granted, the registered voter may, by a special proceeding brought in
3321 the district court in the name of the state upon the relation of the registered voter, investigate
3322 and determine whether or not the candidate, candidate's personal campaign committee, any
3323 member of the candidate's personal campaign committee, or any election officer has violated
3324 any provision of this title.
3325 (b) (i) In the proceeding, the complaint shall:
3326 (A) be served with the summons; and
3327 (B) set forth the name of the person or persons who have allegedly violated this title
3328 and the grounds of those violations in detail.
3329 (ii) The complaint may not be amended except by leave of the court.
3330 (iii) The summons and complaint in the proceeding shall be filed with the court no
3331 later than five days after they are served.
3332 (c) (i) The answer to the complaint shall be served and filed within 10 days after the
3333 service of the summons and complaint.
3334 (ii) Any allegation of new matters in the answer shall be considered controverted by the
3335 adverse party without reply, and the proceeding shall be considered at issue and stand ready for
3336 trial upon five days' notice of trial.
3337 (d) (i) All proceedings initiated under this section have precedence over any other civil
3338 actions.
3339 (ii) The court shall always be considered open for the trial of the issues raised in this
3340 proceeding.
3341 (iii) The proceeding shall be tried and determined as a civil action without a jury, with
3342 the court determining all issues of fact and issues of law.
3343 (iv) If more than one proceeding is pending or the election of more than one person is
3344 investigated and contested, the court may:

3345 (A) order the proceedings consolidated and heard together; and
3346 (B) equitably apportion costs and disbursements.
3347 (e) (i) Either party may request a change of venue as provided by law in civil actions,
3348 but application for a change of venue [~~must~~] shall be made within five days after service of
3349 summons and complaint.
3350 (ii) The judge shall decide the request for a change of venue and issue any necessary
3351 orders within three days after the application is made.
3352 (iii) If a party fails to request a change of venue within five days of service, [~~he~~] that
3353 party has waived [~~his~~] that party's right to a change of venue.
3354 (f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to
3355 recover his taxable costs and disbursements against the person whose right to the office is
3356 contested.
3357 (ii) The judge may not award costs to the defendant unless it appears that the
3358 proceeding was brought in bad faith.
3359 (iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide
3360 whether or not to award costs and disbursements.
3361 (5) Nothing in this section may be construed to prohibit any other civil or criminal
3362 actions or remedies against alleged violators.
3363 (6) In the event a witness asserts a privilege against self-incrimination, testimony and
3364 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of
3365 Immunity.
3366 Section 74. Section **20A-2-102.5** is amended to read:
3367 **20A-2-102.5. Voter registration deadline.**
3368 (1) Except as provided in Section 20A-2-201 and in [~~Title 20A,~~] Chapter 3, Part 4,
3369 Voting by Members of the Military and by Other Persons Living or Serving Abroad, a person
3370 who fails to submit a correctly completed voter registration form on or before the voter
3371 registration deadline [~~shall not~~] may not be permitted to vote in the election.
3372 (2) The voter registration deadline shall be the date that is 30 calendar days before the
3373 date of the election.
3374 Section 75. Section **20A-2-105** is amended to read:
3375 **20A-2-105. Determining residency.**

3376 (1) Except as provided in Subsection (4), election officials and judges shall apply the
3377 standards and requirements of this section when determining whether or not a person is a
3378 resident for purposes of interpreting this title or the Utah Constitution.
3379 (2) A "resident" is a person who resides within a specific voting precinct in Utah as
3380 provided in this section.
3381 (3) (a) A person resides in Utah if:
3382 (i) the person's principal place of residence is within Utah; and
3383 (ii) the person has a present intention to continue residency within Utah permanently or
3384 indefinitely.
3385 (b) A person resides within a particular voting precinct if, as of the date of registering
3386 to vote, the person has the person's principal place of residence in that voting precinct.
3387 (4) (a) The principal place of residence of any person shall be determined by applying
3388 the provisions of this Subsection (4).
3389 (b) A person's "principal place of residence" is that place in which the person's
3390 habitation is fixed and to which, whenever the person is absent, the person has the intention of
3391 returning.
3392 (c) A person has not gained or lost a residence solely because the person is present in
3393 Utah or present in a voting precinct or absent from Utah or absent from the person's voting
3394 precinct because the person is:
3395 (i) employed in the service of the United States or of Utah;
3396 (ii) a student at any institution of learning;
3397 (iii) incarcerated in prison or jail; or
3398 (iv) residing upon any Indian or military reservation.
3399 (d) (i) A member of the armed forces of the United States is not a resident of Utah
3400 merely because that member is stationed at any military facility within Utah.
3401 (ii) In order to be a resident of Utah, that member [~~must~~] shall meet the other
3402 requirements of this section.
3403 (e) (i) Except as provided in Subsection (4)(e)(ii), a person has not lost the person's
3404 residence if that person leaves the person's home to go into a foreign country or into another
3405 state or into another voting precinct within Utah for temporary purposes with the intention of
3406 returning.

3407 (ii) If that person has voted in that other state or voting precinct, the person is a resident
3408 of that other state or voting precinct.
3409 (f) A person is not a resident of any county or voting precinct if that person comes for
3410 temporary purposes and does not intend to make that county or voting precinct the person's
3411 home.
3412 (g) If a person removes to another state with the intention of making it the person's
3413 principal place of residence, the person loses the person's residence in Utah.
3414 (h) If a person moves to another state with the intent of remaining there for an
3415 indefinite time as a place of permanent residence, the person loses the person's residence in
3416 Utah, even though the person intends to return at some future time.
3417 (i) (i) Except as provided in Subsection (4)(i)(ii), the place where a person's family
3418 resides is presumed to be the person's place of residence.
3419 (ii) A person may rebut the presumption established in Subsection (4)(i)(i) by proving
3420 the person's intent to remain at a place other than where the person's family resides.
3421 (j) (i) A person has changed [~~his~~] the person's residence if:
3422 (A) the person has acted affirmatively to [~~remove himself~~] move from one geographic
3423 location; and
3424 (B) the person has an intent to remain in another place.
3425 (ii) There can only be one residence.
3426 (iii) A residence cannot be lost until another is gained.
3427 (5) In computing the period of residence, a person shall:
3428 (a) include the day on which the person's residence begins; and
3429 (b) exclude the day of the next election.
3430 (6) (a) There is a presumption that a person is a resident of Utah and of a voting
3431 precinct and intends to remain in Utah permanently or indefinitely if the person makes an oath
3432 or affirmation upon a registration application form that the person's residence address and place
3433 of residence is within a specific voting precinct in Utah.
3434 (b) The election officers and election officials shall allow that person to register and
3435 vote unless, upon a challenge by a registrar or some other person, it is shown by law or by clear
3436 and convincing evidence that:
3437 (i) the person does not intend to remain permanently or indefinitely in Utah; or

3438 (ii) the person is incarcerated in prison or jail.
3439 (7) (a) The rules set forth in this section for determining place of residence for voting
3440 purposes do not apply to a person incarcerated in prison or jail.
3441 (b) For voting registration purposes, a person incarcerated in prison or jail is
3442 considered to reside in the voting precinct in which the person's place of residence was located
3443 before incarceration.
3444 (8) If a person's principal place of residence is a residential parcel of one acre in size or
3445 smaller that is divided by the boundary line between two or more counties, that person shall be
3446 considered a resident of the county in which a majority of the residential parcel lies.
3447 Section 76. Section **20A-2-306** is amended to read:
3448 **20A-2-306. Removing names from the official register -- Determining and**
3449 **confirming change of residence.**
3450 (1) A county clerk may not remove a voter's name from the official register on the
3451 grounds that the voter has changed residence unless the voter:
3452 (a) confirms in writing that the voter has changed residence to a place outside the
3453 county; or
3454 (b) (i) has not voted in an election during the period beginning on the date of the notice
3455 required by Subsection (3), and ending on the day after the date of the second regular general
3456 election occurring after the date of the notice; and
3457 (ii) has failed to respond to the notice required by Subsection (3).
3458 (2) (a) When a county clerk obtains information that a voter's address has changed and
3459 it appears that the voter still resides within the same county, the county clerk shall:
3460 (i) change the official register to show the voter's new address; and
3461 (ii) send to the voter, by forwardable mail, the notice required by Subsection (3)
3462 printed on a postage prepaid, preaddressed return form.
3463 (b) When a county clerk obtains information that a voter's address has changed and it
3464 appears that the voter now resides in a different county, the county clerk shall verify the
3465 changed residence by sending to the voter, by forwardable mail, the notice required by
3466 Subsection (3) printed on a postage prepaid, preaddressed return form.
3467 (3) Each county clerk shall use substantially the following form to notify voters whose
3468 addresses have changed:

3469 "VOTER REGISTRATION NOTICE
3470 We have been notified that your residence has changed. Please read, complete, and
3471 return this form so that we can update our voter registration records. What is your current
3472 street address?
3473 _____
3474 Street City County State Zip
3475 If you have not changed your residence or have moved but stayed within the same
3476 county, you must complete and return this form to the county clerk so that it is received by the
3477 county clerk no later than 30 days before the date of the election. If you fail to return this form
3478 within that time:
3479 - you may be required to show evidence of your address to the poll worker before being
3480 allowed to vote in either of the next two regular general elections; or
3481 - if you fail to vote at least once from the date this notice was mailed until the passing
3482 of two regular general elections, you will no longer be registered to vote. If you have changed
3483 your residence and have moved to a different county in Utah, you may register to vote by
3484 contacting the county clerk in your county.
3485 _____
3486 Signature of Voter"
3487 (4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the
3488 names of any voters from the official register during the 90 days before a regular primary
3489 election and the 90 days before a regular general election.
3490 (b) The county clerk may remove the names of voters from the official register during
3491 the 90 days before a regular primary election and the 90 days before a regular general election
3492 if:
3493 (i) the voter requests, in writing, that [~~his~~] the voter's name be removed; or
3494 (ii) the voter has died.
3495 (c) (i) After a county clerk mails a notice as required in this section, the clerk may list
3496 that voter as inactive.
3497 (ii) An inactive voter [~~must~~] shall be allowed to vote, sign petitions, and have all other
3498 privileges of a registered voter.
3499 (iii) A county is not required to send routine mailings to inactive voters and is not

3500 required to count inactive voters when dividing precincts and preparing supplies.
3501 Section 77. Section **20A-4-201** is amended to read:
3502 **20A-4-201. Delivery of election returns.**
3503 (1) One poll worker shall deliver the ballot box, the lock, and the key to:
3504 (a) the election officer; or
3505 (b) the location directed by the election officer.
3506 (2) (a) Before they adjourn, the poll workers shall choose one or more of their number
3507 to deliver the election returns to the election officer.
3508 (b) That poll worker or those poll workers shall:
3509 (i) deliver the unopened envelopes or pouches to the election officer or counting center
3510 immediately but no later than 24 hours after the polls close; or
3511 (ii) if the polling place is 15 miles or more from the county seat, mail the election
3512 returns to the election officer by registered mail from the post office most convenient to the
3513 polling place within 24 hours after the polls close.
3514 (3) The election officer shall pay each poll worker reasonable compensation for travel
3515 that is necessary to deliver the election returns and to return to the polling place.
3516 (4) The requirements of this section [~~shall not~~] do not prohibit transmission of the
3517 unofficial vote count to the counting center via electronic means, provided that reasonable
3518 security measures are taken to preserve the integrity and privacy of the transmission.
3519 Section 78. Section **20A-5-403** is amended to read:
3520 **20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections --**
3521 **Arrangements.**
3522 (1) Each election officer shall:
3523 (a) designate polling places for each voting precinct in the jurisdiction; and
3524 (b) obtain the approval of the county or municipal legislative body or local district
3525 governing board for those polling places.
3526 (2) (a) For each polling place, the election officer shall provide:
3527 (i) an American flag;
3528 (ii) a sufficient number of voting booths or compartments;
3529 (iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot sheets,
3530 write-in ballots, and any other records and supplies necessary to enable a voter to vote;

3531 (iv) the constitutional amendment cards required by Part 1, Election Notices and
3532 Instructions;
3533 (v) voter information pamphlets required by [~~Title 20A,~~] Chapter 7, Part 7, Voter
3534 Information Pamphlet;
3535 (vi) the instruction cards required by Section 20A-5-102; and
3536 (vii) a sign, to be prominently displayed in the polling place, indicating that valid voter
3537 identification is required for every voter before the voter may vote and listing the forms of
3538 identification that constitute valid voter identification.
3539 (b) Each election officer shall ensure that:
3540 (i) each voting booth is at a convenient height for writing, and is arranged so that the
3541 voter can prepare [~~his~~] the voter's ballot screened from observation;
3542 (ii) there are a sufficient number of voting booths or voting devices to accommodate
3543 the voters at that polling place; and
3544 (iii) there is at least one voting booth or voting device that is configured to
3545 accommodate persons with disabilities.
3546 (c) Each county clerk shall provide a ballot box for each polling place that is large
3547 enough to properly receive and hold the ballots to be cast.
3548 (3) (a) All polling places shall be physically inspected by each county clerk to ensure
3549 access by a person with a disability.
3550 (b) Any issues concerning inaccessibility to polling places by a person with a disability
3551 discovered during the inspections referred to in Subsection (3)(a) or reported to the county
3552 clerk shall be:
3553 (i) forwarded to the Office of the Lieutenant Governor; and
3554 (ii) within six months of the time of the complaint, the issue of inaccessibility shall be
3555 either:
3556 (A) remedied at the particular location by the county clerk;
3557 (B) the county clerk shall designate an alternative accessible location for the particular
3558 precinct; or
3559 (C) if no practical solution can be identified, file with the Office of the Lieutenant
3560 Governor a written explanation identifying the reasons compliance cannot reasonably be met.
3561 (4) (a) The municipality in which the election is held shall pay the cost of conducting

3562 each municipal election, including the cost of printing and supplies.
3563 (b) (i) Costs assessed by a county clerk to a municipality under this section [~~shall not~~]
3564 may not exceed the actual costs incurred by the county clerk.
3565 (ii) The actual costs shall include:
3566 (A) costs of or rental fees associated with the use of election equipment and supplies;
3567 and
3568 (B) reasonable and necessary administrative costs.
3569 (5) The county clerk shall make detailed entries of all proceedings had under this
3570 chapter.
3571 Section 79. Section **20A-6-302** is amended to read:
3572 **20A-6-302. Paper ballots -- Placement of candidates' names.**
3573 (1) Each election officer shall ensure, for paper ballots in regular general elections,
3574 that:
3575 (a) except for candidates for state school board and local school boards:
3576 (i) each candidate is listed by party; and
3577 (ii) candidates' surnames are listed in alphabetical order on the ballots when two or
3578 more candidates' names are required to be listed on a ticket under the title of an office;
3579 (b) the names of candidates for the State Board of Education are placed on the ballot as
3580 certified by the lieutenant governor under Section 20A-14-105;
3581 (c) if candidates for membership on a local board of education were selected in a
3582 regular primary election, the name of the candidate who received the most votes in the regular
3583 primary election is listed first on the ballot; and
3584 (d) if candidates for membership on a local board of education were not selected in the
3585 regular primary election, the names of the candidates are listed on the ballot in the order
3586 determined by a lottery conducted by the county clerk.
3587 (2) (a) The election officer may not allow the name of a candidate who dies or
3588 withdraws before election day to be printed upon the ballots.
3589 (b) If the ballots have already been printed, the election officer:
3590 (i) shall, if possible, cancel the name of the dead or withdrawn candidate by drawing a
3591 line through the candidate's name before the ballots are delivered to voters; and
3592 (ii) may not count any votes for that dead or withdrawn candidate.

3593 (3) (a) When there is only one candidate for county attorney at the regular general
3594 election in counties that have three or fewer registered voters of the county who are licensed
3595 active members in good standing of the Utah State Bar, the county clerk shall cause that
3596 candidate's name and party affiliation, if any, to be placed on a separate section of the ballot
3597 with the following question: "Shall (name of candidate) be elected to the office of county
3598 attorney? Yes ____ No ____."
3599 (b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is
3600 elected to the office of county attorney.
3601 (c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not
3602 elected and may not take office, nor may [~~he~~] the candidate continue in the office past the end
3603 of the term resulting from any prior election or appointment.
3604 (d) When the name of only one candidate for county attorney is printed on the ballot
3605 under authority of this Subsection (3), the county clerk may not count any write-in votes
3606 received for the office of county attorney.
3607 (e) If no qualified person files for the office of county attorney or if the candidate is not
3608 elected by the voters, the county legislative body shall appoint the county attorney as provided
3609 in Section 20A-1-509.2.
3610 (f) If the candidate whose name would, except for this Subsection (3)(f), be placed on
3611 the ballot under Subsection (3)(a) has been elected on a ballot under Subsection (3)(a) to the
3612 two consecutive terms immediately preceding the term for which the candidate is seeking
3613 election, Subsection (3)(a) [~~shall not~~] does not apply and that candidate shall be considered to
3614 be an unopposed candidate the same as any other unopposed candidate for another office,
3615 unless a petition is filed with the county clerk before the date of that year's primary election
3616 that:
3617 (i) requests the procedure set forth in Subsection (3)(a) to be followed; and
3618 (ii) contains the signatures of registered voters in the county representing in number at
3619 least 25% of all votes cast in the county for all candidates for governor at the last election at
3620 which a governor was elected.
3621 (4) (a) When there is only one candidate for district attorney at the regular general
3622 election in a prosecution district that has three or fewer registered voters of the district who are
3623 licensed active members in good standing of the Utah State Bar, the county clerk shall cause

3624 that candidate's name and party affiliation, if any, to be placed on a separate section of the
3625 ballot with the following question: "Shall (name of candidate) be elected to the office of district
3626 attorney? Yes ____ No ____."
3627 (b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is
3628 elected to the office of district attorney.
3629 (c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not
3630 elected and may not take office, nor may [~~he~~] the candidate continue in the office past the end
3631 of the term resulting from any prior election or appointment.
3632 (d) When the name of only one candidate for district attorney is printed on the ballot
3633 under authority of this Subsection (4), the county clerk may not count any write-in votes
3634 received for the office of district attorney.
3635 (e) If no qualified person files for the office of district attorney, or if the only candidate
3636 is not elected by the voters under this subsection, the county legislative body shall appoint a
3637 new district attorney for a four-year term as provided in Section 20A-1-509.2.
3638 (f) If the candidate whose name would, except for this Subsection (4)(f), be placed on
3639 the ballot under Subsection (4)(a) has been elected on a ballot under Subsection (4)(a) to the
3640 two consecutive terms immediately preceding the term for which the candidate is seeking
3641 election, Subsection (4)(a) [~~shall not~~] does not apply and that candidate shall be considered to
3642 be an unopposed candidate the same as any other unopposed candidate for another office,
3643 unless a petition is filed with the county clerk before the date of that year's primary election
3644 that:
3645 (i) requests the procedure set forth in Subsection (4)(a) to be followed; and
3646 (ii) contains the signatures of registered voters in the county representing in number at
3647 least 25% of all votes cast in the county for all candidates for governor at the last election at
3648 which a governor was elected.
3649 Section 80. Section **20A-7-202** is amended to read:
3650 **20A-7-202. Statewide initiative process -- Application procedures -- Time to**
3651 **gather signatures -- Grounds for rejection.**
3652 (1) Persons wishing to circulate an initiative petition shall file an application with the
3653 lieutenant governor.
3654 (2) The application shall contain:

3655 (a) the name and residence address of at least five sponsors of the initiative petition;
3656 (b) a statement indicating that each of the sponsors:
3657 (i) is a resident of Utah; and
3658 (ii) has voted in a regular general election in Utah within the last three years;
3659 (c) the signature of each of the sponsors, attested to by a notary public;
3660 (d) a copy of the proposed law that includes:
3661 (i) the title of the proposed law, which clearly expresses the subject of the law; and
3662 (ii) the text of the proposed law; and
3663 (e) a statement indicating whether or not persons gathering signatures for the petition
3664 may be paid for doing so.
3665 (3) The application and its contents are public when filed with the lieutenant governor.
3666 (4) (a) The sponsors shall qualify the petition for the regular general election ballot no
3667 later than one year after the application is filed.
3668 (b) If the sponsors fail to qualify the petition for that ballot, the sponsors [~~must~~] shall:
3669 (i) submit a new application;
3670 (ii) obtain new signature sheets; and
3671 (iii) collect signatures again.
3672 (5) The lieutenant governor shall reject the application and not issue circulation sheets
3673 if:
3674 (a) the law proposed by the initiative is patently unconstitutional;
3675 (b) the law proposed by the initiative is nonsensical;
3676 (c) the proposed law could not become law if passed;
3677 (d) the law contains more than one subject;
3678 (e) the subject of the law is not clearly expressed in the law's title; or
3679 (f) the law proposed by the initiative is identical or substantially similar to a law
3680 proposed by an initiative that was submitted to the county clerks and lieutenant governor for
3681 certification and evaluation within two years preceding the date on which the application for
3682 this initiative was filed.
3683 Section 81. Section **20A-7-204.1** is amended to read:
3684 **20A-7-204.1. Public hearings to be held before initiative petitions are circulated.**
3685 (1) (a) After issuance of the initial fiscal impact estimate by the Governor's Office of

3686 Planning and Budget and before circulating initiative petitions for signature statewide, sponsors
3687 of the initiative petition shall hold at least seven public hearings throughout Utah as follows:
3688 (i) one in the Bear River region -- Box Elder, Cache, or Rich County;
3689 (ii) one in the Southwest region -- Beaver, Garfield, Iron, Kane, or Washington
3690 County;
3691 (iii) one in the Mountain region -- Summit, Utah, or Wasatch County;
3692 (iv) one in the Central region -- Juab, Millard, Piute, Sanpete, Sevier, or Wayne
3693 County;
3694 (v) one in the Southeast region -- Carbon, Emery, Grand, or San Juan County;
3695 (vi) one in the Uintah Basin region -- Daggett, Duchesne, or Uintah County; and
3696 (vii) one in the Wasatch Front region -- Davis, Morgan, Salt Lake, Tooele, or Weber
3697 County.
3698 (b) Of the seven meetings, at least two of the meetings [~~must~~] shall be held in a first or
3699 second class county, but not in the same county.
3700 (2) At least three calendar days before the date of the public hearing, the sponsors
3701 shall:
3702 (a) provide written notice of the public hearing to:
3703 (i) the lieutenant governor for posting on the state's website; and
3704 (ii) each state senator, state representative, and county commission or county council
3705 member who is elected in whole or in part from the region where the public hearing will be
3706 held; and
3707 (b) publish written notice of the public hearing detailing its time, date, and location:
3708 (i) in at least one newspaper of general circulation in each county in the region where
3709 the public hearing will be held; and
3710 (ii) on the Utah Public Notice Website created in Section 63F-1-701.
3711 (3) (a) During the public hearing, the sponsors shall either:
3712 (i) video tape or audio tape the public hearing and, when the hearing is complete,
3713 deposit the complete audio or video tape of the meeting with the lieutenant governor; or
3714 (ii) take comprehensive minutes of the public hearing, detailing the names and titles of
3715 each speaker and summarizing each speaker's comments.
3716 (b) The lieutenant governor shall make copies of the tapes or minutes available to the

3717 public.
3718 Section 82. Section **20A-7-702 (Superseded 01/01/12)** is amended to read:
3719 **20A-7-702 (Superseded 01/01/12). Voter information pamphlet -- Form --**
3720 **Contents -- Distribution.**
3721 (1) The lieutenant governor shall ensure that all information submitted for publication
3722 in the voter information pamphlet is:
3723 (a) printed and bound in a single pamphlet;
3724 (b) printed in clear readable type, no less than 10 point, except that the text of any
3725 measure may be set forth in eight-point type; and
3726 (c) printed on a quality and weight of paper that best serves the voters.
3727 (2) The voter information pamphlet shall contain the following items in this order:
3728 (a) a cover title page;
3729 (b) an introduction to the pamphlet by the lieutenant governor;
3730 (c) a table of contents;
3731 (d) a list of all candidates for constitutional offices;
3732 (e) a list of candidates for each legislative district;
3733 (f) a 100-word statement of qualifications for each candidate for the office of governor,
3734 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the
3735 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before
3736 the date of the election;
3737 (g) information pertaining to all measures to be submitted to the voters, beginning a
3738 new page for each measure and containing, in the following order for each measure:
3739 (i) a copy of the number and ballot title of the measure;
3740 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by
3741 the Legislature or by referendum;
3742 (iii) the impartial analysis of the measure prepared by the Office of Legislative
3743 Research and General Counsel;
3744 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the
3745 measure, the arguments against the measure, and the rebuttal to the arguments against the
3746 measure, with the name and title of the authors at the end of each argument or rebuttal;
3747 (v) for each constitutional amendment, a complete copy of the text of the constitutional

3748 amendment, with all new language underlined, and all deleted language placed within brackets;
3749 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the
3750 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section
3751 20A-7-202.5; and
3752 (vii) for each referendum qualified for the ballot, a complete copy of the text of the law
3753 being submitted to the voters for their approval or rejection, with all new language underlined
3754 and all deleted language placed within brackets, as applicable;
3755 (h) a description provided by the Judicial Council of the selection and retention process
3756 for judges, including, in the following order:
3757 (i) a description of the judicial selection process;
3758 (ii) a description of the judicial performance evaluation process;
3759 (iii) a description of the judicial retention election process;
3760 (iv) a list of the criteria and minimum standards of judicial performance evaluation;
3761 (v) the names of the judges standing for retention election; and
3762 (vi) for each judge:
3763 (A) the counties in which the judge is subject to retention election;
3764 (B) a short biography of professional qualifications and a recent photograph;
3765 (C) for each standard of performance, a statement identifying whether or not the judge
3766 met the standard and, if not, the manner in which the judge failed to meet the standard;
3767 (D) a statement provided by the Utah Supreme Court identifying the cumulative
3768 number of informal reprimands, when consented to by the judge in accordance with Title 78A,
3769 Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and
3770 suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13
3771 during the judge's current term and the immediately preceding term, and a detailed summary of
3772 the supporting reasons for each violation of the Code of Judicial Conduct that the judge has
3773 received; and
3774 (E) a statement identifying whether or not the judge was certified by the Judicial
3775 Council;
3776 (vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic
3777 format, the responses for each attorney, jury, and other survey question used by the Judicial
3778 Council for certification of judges, displayed in 1% increments; and

3779 (B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a
3780 particular judge is too small to provide statistically reliable information in 1% increments, the
3781 survey results for that judge shall be reported as being above or below 70% and a statement by
3782 the surveyor explaining why the survey is statistically unreliable shall also be included;
3783 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,
3784 indicating the ballot marking procedure used by each county and explaining how to mark the
3785 ballot for each procedure;
3786 (j) voter registration information, including information on how to obtain an absentee
3787 ballot;
3788 (k) a list of all county clerks' offices and phone numbers; and
3789 (l) on the back cover page, a printed copy of the following statement signed by the
3790 lieutenant governor:
3791 "I, _____ (print name), Lieutenant Governor of Utah, certify that the
3792 measures contained in this pamphlet will be submitted to the voters of Utah at the election to
3793 be held throughout the state on ____ (date of election), and that this pamphlet is complete and
3794 correct according to law. SEAL
3795 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day
3796 of ____ (month), ____ (year)
3797 (signed) _____
3798 Lieutenant Governor"
3799 [~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the~~
3800 ~~date voting commences:~~]
3801 (3) No earlier than 40 days, and no later than 15 days, before the day on which voting
3802 commences, the lieutenant governor shall:
3803 (a) (i) distribute one copy of the voter information pamphlet to each household within
3804 the state; or
3805 (ii) ensure that one copy of the voter information pamphlet is placed in one issue of
3806 every newspaper of general circulation in the state;
3807 (b) ensure that a sufficient number of printed voter information pamphlets are available
3808 for distribution as required by this section;
3809 (c) provide voter information pamphlets to each county clerk for free distribution upon

3810 request and for placement at polling places; and
3811 (d) ensure that the distribution of the voter information pamphlets is completed 15 days
3812 before the election.
3813 Section 83. Section **20A-7-702 (Effective 01/01/12)** is amended to read:
3814 **20A-7-702 (Effective 01/01/12). Voter information pamphlet -- Form -- Contents**
3815 **-- Distribution.**
3816 (1) The lieutenant governor shall ensure that all information submitted for publication
3817 in the voter information pamphlet is:
3818 (a) printed and bound in a single pamphlet;
3819 (b) printed in clear readable type, no less than 10 point, except that the text of any
3820 measure may be set forth in eight-point type; and
3821 (c) printed on a quality and weight of paper that best serves the voters.
3822 (2) The voter information pamphlet shall contain the following items in this order:
3823 (a) a cover title page;
3824 (b) an introduction to the pamphlet by the lieutenant governor;
3825 (c) a table of contents;
3826 (d) a list of all candidates for constitutional offices;
3827 (e) a list of candidates for each legislative district;
3828 (f) a 100-word statement of qualifications for each candidate for the office of governor,
3829 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the
3830 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before
3831 the date of the election;
3832 (g) information pertaining to all measures to be submitted to the voters, beginning a
3833 new page for each measure and containing, in the following order for each measure:
3834 (i) a copy of the number and ballot title of the measure;
3835 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by
3836 the Legislature or by referendum;
3837 (iii) the impartial analysis of the measure prepared by the Office of Legislative
3838 Research and General Counsel;
3839 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the
3840 measure, the arguments against the measure, and the rebuttal to the arguments against the

3841 measure, with the name and title of the authors at the end of each argument or rebuttal;
3842 (v) for each constitutional amendment, a complete copy of the text of the constitutional
3843 amendment, with all new language underlined, and all deleted language placed within brackets;
3844 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the
3845 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section
3846 20A-7-202.5; and
3847 (vii) for each referendum qualified for the ballot, a complete copy of the text of the law
3848 being submitted to the voters for their approval or rejection, with all new language underlined
3849 and all deleted language placed within brackets, as applicable;
3850 (h) a description provided by the Judicial Performance Evaluation Commission of the
3851 selection and retention process for judges, including, in the following order:
3852 (i) a description of the judicial selection process;
3853 (ii) a description of the judicial performance evaluation process;
3854 (iii) a description of the judicial retention election process;
3855 (iv) a list of the criteria of the judicial performance evaluation and the minimum
3856 performance standards;
3857 (v) the names of the judges standing for retention election; and
3858 (vi) for each judge:
3859 (A) a list of the counties in which the judge is subject to retention election;
3860 (B) a short biography of professional qualifications and a recent photograph;
3861 (C) for each standard of performance, a statement identifying whether or not the judge
3862 met the standard and, if not, the manner in which the judge failed to meet the standard;
3863 (D) a statement provided by the Utah Supreme Court identifying the cumulative
3864 number of informal reprimands, when consented to by the judge in accordance with Title 78A,
3865 Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and
3866 suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13
3867 during the judge's current term and the immediately preceding term, and a detailed summary of
3868 the supporting reasons for each violation of the Code of Judicial Conduct that the judge has
3869 received;
3870 (E) a statement identifying whether or not the Judicial Performance Evaluation
3871 Commission recommends the judge be retained or declines to make a recommendation; and

3872 (F) any statement provided by a judge who is not recommended for retention by the
3873 Judicial Performance Evaluation Commission under Section 78A-12-203;
3874 (vii) for each judge, in a bar graph, the average of responses to each survey category,
3875 displayed with an identification of the minimum acceptable score as set by Section 78A-12-205
3876 and the average score of all judges of the same court level; and
3877 (viii) [~~an Internet~~] a website address that contains the Judicial Performance Evaluation
3878 Commission's report on the judge's performance evaluation;
3879 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,
3880 indicating the ballot marking procedure used by each county and explaining how to mark the
3881 ballot for each procedure;
3882 (j) voter registration information, including information on how to obtain an absentee
3883 ballot;
3884 (k) a list of all county clerks' offices and phone numbers; and
3885 (l) on the back cover page, a printed copy of the following statement signed by the
3886 lieutenant governor:
3887 "I, _____ (print name), Lieutenant Governor of Utah, certify that the
3888 measures contained in this pamphlet will be submitted to the voters of Utah at the election to
3889 be held throughout the state on ____ (date of election), and that this pamphlet is complete and
3890 correct according to law. SEAL
3891 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day
3892 of ____ (month), ____ (year)
3893 (signed) _____
3894 Lieutenant Governor"
3895 [~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the~~
3896 ~~date voting commences:~~]
3897 (3) No earlier than 40 days, and no later than 15 days, before the day on which voting
3898 commences, the lieutenant governor shall:
3899 (a) (i) distribute one copy of the voter information pamphlet to each household within
3900 the state; or
3901 (ii) ensure that one copy of the voter information pamphlet is placed in one issue of
3902 every newspaper of general circulation in the state;

3903 (b) ensure that a sufficient number of printed voter information pamphlets are available
3904 for distribution as required by this section;
3905 (c) provide voter information pamphlets to each county clerk for free distribution upon
3906 request and for placement at polling places; and
3907 (d) ensure that the distribution of the voter information pamphlets is completed 15 days
3908 before the election.
3909 Section 84. Section **20A-7-706** is amended to read:
3910 **20A-7-706. Copies of arguments to be sent to opposing authors -- Rebuttal**
3911 **arguments.**
3912 (1) When the lieutenant governor has received the arguments for and against a measure
3913 to be submitted to the voters, the lieutenant governor shall immediately send copies of the
3914 arguments in favor of the measure to the authors of the arguments against and copies of the
3915 arguments against to the authors of the arguments in favor.
3916 (2) The authors may prepare and submit rebuttal arguments not exceeding 250 words.
3917 (3) (a) The rebuttal arguments [~~must~~] shall be filed with the lieutenant governor:
3918 (i) for constitutional amendments and referendum petitions, not later than the day that
3919 falls 120 days before the date of the election; and
3920 (ii) for initiatives, not later than August 30.
3921 (b) Except as provided in Subsection (3)(d), the authors may not amend or change the
3922 rebuttal arguments after they are submitted to the lieutenant governor.
3923 (c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the
3924 arguments in any way.
3925 (d) The lieutenant governor and the authors of a rebuttal argument may jointly modify
3926 a rebuttal argument after it is submitted if:
3927 (i) they jointly agree that changes to the rebuttal argument must be made to correct
3928 spelling or grammatical errors; and
3929 (ii) the rebuttal argument has not yet been submitted for typesetting.
3930 (4) The lieutenant governor shall ensure that:
3931 (a) rebuttal arguments are printed in the same manner as the direct arguments; and
3932 (b) each rebuttal argument follows immediately after the direct argument which it
3933 seeks to rebut.

3934 Section 85. Section **20A-9-403** is amended to read:
3935 **20A-9-403. Regular primary elections.**
3936 (1) (a) The fourth Tuesday of June of each even-numbered year is designated as regular
3937 primary election day.
3938 (b) Each registered political party that chooses to use the primary election process to
3939 nominate some or all of its candidates shall comply with the requirements of this section.
3940 (2) (a) As a condition for using the state's election system, each registered political
3941 party that wishes to participate in the primary election shall:
3942 (i) declare their intent to participate in the primary election;
3943 (ii) identify one or more registered political parties whose members may vote for the
3944 registered political party's candidates and whether or not persons identified as unaffiliated with
3945 a political party may vote for the registered political party's candidates; and
3946 (iii) certify that information to the lieutenant governor no later than 5 p.m. on March 1
3947 of each even-numbered year.
3948 (b) As a condition for using the state's election system, each registered political party
3949 that wishes to participate in the primary election shall:
3950 (i) certify the name and office of all of the registered political party's candidates to the
3951 lieutenant governor no later than 5 p.m. on May 13 of each even-numbered year; and
3952 (ii) certify the name and office of each of its county candidates to the county clerks by
3953 5 p.m. on May 13 of each even-numbered year.
3954 (c) By 5 p.m. on May 16 of each even-numbered year, the lieutenant governor shall
3955 send the county clerks a certified list of the names of all statewide or multicounty candidates
3956 that [~~must~~] shall be printed on the primary ballot.
3957 (d) (i) Except as provided in Subsection (2)(d)(ii), if a registered political party does
3958 not wish to participate in the primary election, it shall submit the names of its county
3959 candidates to the county clerks and the names of all of its candidates to the lieutenant governor
3960 by 5 p.m. on May 30 of each even-numbered year.
3961 (ii) A registered political party's candidates for President and Vice-President of the
3962 United States shall be certified to the lieutenant governor as provided in Subsection
3963 20A-9-202(4).
3964 (e) Each political party shall certify the names of its presidential and vice-presidential

3965 candidates and presidential electors to the lieutenant governor's office no later than September
3966 8 of each presidential election year.
3967 (3) The county clerk shall:
3968 (a) review the declarations of candidacy filed by candidates for local boards of
3969 education to determine if more than two candidates have filed for the same seat;
3970 (b) place the names of all candidates who have filed a declaration of candidacy for a
3971 local board of education seat on the nonpartisan section of the ballot if more than two
3972 candidates have filed for the same seat; and
3973 (c) conduct a lottery to determine the order of the candidates' names on the ballot.
3974 (4) After the county clerk receives the certified list from a registered political party, the
3975 county clerk shall post or publish a primary election notice in substantially the following form:
3976 "Notice is given that a primary election will be held Tuesday, June ____,
3977 _____(year), to nominate party candidates for the parties and nonpartisan offices listed on
3978 the primary ballot. The polling place for voting precinct ____ is ____. The polls will open at 7
3979 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk".
3980 (5) (a) Candidates receiving the highest number of votes cast for each office at the
3981 regular primary election are nominated by their party or nonpartisan group for that office.
3982 (b) If two or more candidates are to be elected to the office at the regular general
3983 election, those party candidates equal in number to positions to be filled who receive the
3984 highest number of votes at the regular primary election are the nominees of their party for those
3985 positions.
3986 (6) (a) When a tie vote occurs in any primary election for any national, state, or other
3987 office that represents more than one county, the governor, lieutenant governor, and attorney
3988 general shall, at a public meeting called by the governor and in the presence of the candidates
3989 involved, select the nominee by lot cast in whatever manner the governor determines.
3990 (b) When a tie vote occurs in any primary election for any county office, the district
3991 court judges of the district in which the county is located shall, at a public meeting called by
3992 the judges and in the presence of the candidates involved, select the nominee by lot cast in
3993 whatever manner the judges determine.
3994 (7) The expense of providing all ballots, blanks, or other supplies to be used at any
3995 primary election provided for by this section, and all expenses necessarily incurred in the

3996 preparation for or the conduct of that primary election shall be paid out of the treasury of the
3997 county or state, in the same manner as for the regular general elections.
3998 Section 86. Section **20A-11-401** is amended to read:
3999 **20A-11-401. Officeholder financial reporting requirements -- Year-end summary**
4000 **report.**
4001 (1) (a) Each officeholder shall file a summary report by January 10 of each year.
4002 (b) An officeholder that is required to file a summary report both as an officeholder and
4003 as a candidate for office under the requirements of this chapter may file a single summary
4004 report as a candidate and an officeholder, provided that the combined report meets the
4005 requirements of:
4006 (i) this section; and
4007 (ii) the section that provides the requirements for the summary report [~~that must be~~]
4008 filed by the officeholder in the officeholder's capacity of a candidate for office.
4009 (2) (a) Each summary report shall include the following information as of December 31
4010 of the previous year:
4011 (i) the net balance of the last summary report, if any;
4012 (ii) a single figure equal to the total amount of receipts received since the last summary
4013 report, if any;
4014 (iii) a single figure equal to the total amount of expenditures made since the last
4015 summary report, if any;
4016 (iv) a detailed listing of each contribution and public service assistance received since
4017 the last summary report;
4018 (v) for each nonmonetary contribution:
4019 (A) the fair market value of the contribution with that information provided by the
4020 contributor; and
4021 (B) a specific description of the contribution;
4022 (vi) a detailed listing of each expenditure made since the last summary report;
4023 (vii) for each nonmonetary expenditure, the fair market value of the expenditure; and
4024 (viii) a net balance for the year consisting of the net balance from the last summary
4025 report plus all receipts minus all expenditures.
4026 (b) (i) For all individual contributions or public service assistance of $50 or less, a

4027 single aggregate figure may be reported without separate detailed listings.
4028 (ii) Two or more contributions from the same source that have an aggregate total of
4029 more than $50 may not be reported in the aggregate, but shall be reported separately.
4030 (c) In preparing the report, all receipts and expenditures shall be reported as of
4031 December 31 of the previous year.
4032 (3) The summary report shall contain a paragraph signed by the officeholder certifying
4033 that, to the best of the officeholder's knowledge, all receipts and all expenditures have been
4034 reported as of December 31 of the last calendar year and that there are no bills or obligations
4035 outstanding and unpaid except as set forth in that report.
4036 Section 87. Section **20A-11-1603** is amended to read:
4037 **20A-11-1603. Financial disclosure form -- Required when filing for candidacy --**
4038 **Public availability.**
4039 (1) Candidates seeking the following offices shall file a financial disclosure with the
4040 filing officer at the time of filing a declaration of candidacy:
4041 (a) state constitutional officer;
4042 (b) state legislator; or
4043 (c) State Board of Education member.
4044 (2) A filing officer [~~shall not~~] may not accept a declaration of candidacy for an office
4045 listed in Subsection (1) unless the declaration of candidacy is accompanied by the financial
4046 disclosure required by this section.
4047 (3) The financial disclosure form shall contain the same requirements and shall be in
4048 the same format as the financial disclosure form described in Section 76-8-109.
4049 (4) The financial disclosure form shall:
4050 (a) be made available for public inspection at the filing officer's place of business;
4051 (b) if the filing officer is an individual other than the lieutenant governor, be provided
4052 to the lieutenant governor within five business days of the date of filing and be made publicly
4053 available at the Office of the Lieutenant Governor; and
4054 (c) be made publicly available on the Statewide Electronic Voter Information Website
4055 administered by the lieutenant governor.
4056 Section 88. Section **20A-14-103** is amended to read:
4057 **20A-14-103. State Board of Education members -- When elected -- Qualifications**

4058 **-- Avoiding conflicts of interest.**
4059 (1) (a) In 2002 and every four years thereafter, one member each shall be elected from
4060 new Districts 2, 3, 5, 6, 9, 10, 14, and 15 to serve a four-year term.
4061 (b) In 2004 and every four years thereafter, one member each shall be elected from new
4062 Districts 4, 7, 8, 11, 12, and 13 to serve a four-year term.
4063 (c) (i) Because of the combination of certain former districts, the state school board
4064 members elected from old Districts 2 and 4 who will reside in new District 1 may not serve out
4065 the term for which they were elected, but shall stand for election in 2002 for a term of office of
4066 four years from the realigned district in which each resides.
4067 (ii) If one of the incumbent state school board members from new District 1 indicates
4068 in writing to the lieutenant governor that the school board member will not seek reelection, that
4069 incumbent state school board member may serve until January 1, 2003 and the other incumbent
4070 state school board member shall serve out the term for which the member was elected, which is
4071 until January 1, 2005.
4072 (2) (a) A person seeking election to the state school board [~~must~~] shall have been a
4073 resident of the state school board district in which the person is seeking election for at least one
4074 year as of the date of the election.
4075 (b) A person who has resided within the state school board district, as the boundaries
4076 of the district exist on the date of the election, for one year immediately preceding the date of
4077 the election shall be considered to have met the requirements of this Subsection (2).
4078 (3) A member shall:
4079 (a) be and remain a registered voter in the state board district from which the member
4080 was elected or appointed; and
4081 (b) maintain the member's primary residence within the state board district from which
4082 the member was elected or appointed during the member's term of office.
4083 (4) A member of the State Board of Education may not, during the member's term of
4084 office, also serve as an employee of:
4085 (a) the board;
4086 (b) the Utah State Office of Education; or
4087 (c) the Utah State Office of Rehabilitation.
4088 Section 89. Section **20A-14-201** is amended to read:

4089 **20A-14-201. Boards of education -- School board districts -- Creation --**
4090 **Reapportionment.**
4091 (1) (a) The county legislative body, for local school districts whose boundaries
4092 encompass more than a single municipality, and the municipal legislative body, for school
4093 districts contained completely within a municipality, shall divide the local school district into
4094 local school board districts as required under Subsection 20A-14-202(1)(a).
4095 (b) The county and municipal legislative bodies shall divide the school district so that
4096 the local school board districts are substantially equal in population and are as contiguous and
4097 compact as practicable.
4098 (2) (a) County and municipal legislative bodies shall reapportion district boundaries to
4099 meet the population, compactness, and contiguity requirements of this section:
4100 (i) at least once every 10 years;
4101 (ii) if a new district is created:
4102 (A) within 45 days after the canvass of an election at which voters approve the creation
4103 of a new district; and
4104 (B) at least 60 days before the candidate filing deadline for a school board election;
4105 (iii) whenever districts are consolidated;
4106 (iv) whenever a district loses more than 20% of the population of the entire school
4107 district to another district;
4108 (v) whenever a district loses more than 50% of the population of a local school board
4109 district to another district;
4110 (vi) whenever a district receives new residents equal to at least 20% of the population
4111 of the district at the time of the last reapportionment because of a transfer of territory from
4112 another district; and
4113 (vii) whenever it is necessary to increase the membership of a board from five to seven
4114 members as a result of changes in student membership under Section 20A-14-202.
4115 (b) If a school district receives territory containing less than 20% of the population of
4116 the transferee district at the time of the last reapportionment, the local school board may assign
4117 the new territory to one or more existing school board districts.
4118 (3) (a) Reapportionment does not affect the right of any school board member to
4119 complete the term for which the member was elected.

4120 (b) (i) After reapportionment, representation in a local school board district shall be
4121 determined as provided in this Subsection (3).
4122 (ii) If only one board member whose term extends beyond reapportionment lives
4123 within a reapportioned local school board district, that board member shall represent that local
4124 school board district.
4125 (iii) (A) If two or more members whose terms extend beyond reapportionment live
4126 within a reapportioned local school board district, the members involved shall select one
4127 member by lot to represent the local school board district.
4128 (B) The other members shall serve at-large for the remainder of their terms.
4129 (C) The at-large board members shall serve in addition to the designated number of
4130 board members for the board in question for the remainder of their terms.
4131 (iv) If there is no board member living within a local school board district whose term
4132 extends beyond reapportionment, the seat shall be treated as vacant and filled as provided in
4133 this part.
4134 (4) (a) If, before an election affected by reapportionment, the county or municipal
4135 legislative body that conducted the reapportionment determines that one or more members
4136 [~~must~~] shall be elected to terms of two years to meet this part's requirements for staggered
4137 terms, the legislative body shall determine by lot which of the reapportioned local school board
4138 districts will elect members to two-year terms and which will elect members to four-year terms.
4139 (b) All subsequent elections are for four-year terms.
4140 (5) Within 10 days after any local school board district boundary change, the county or
4141 municipal legislative body making the change shall send an accurate map or plat of the
4142 boundary change to the Automated Geographic Reference Center created under Section
4143 63F-1-506.
4144 Section 90. Section **20A-14-202** is amended to read:
4145 **20A-14-202. Local boards of education -- Membership -- When elected --**
4146 **Qualifications -- Avoiding conflicts of interest.**
4147 (1) (a) Except as provided in Subsection (1)(b), the board of education of a school
4148 district with a student population of up to 24,000 students shall consist of five members.
4149 (b) The board of education of a school district with a student population of more than
4150 10,000 students but fewer than 24,000 students shall increase from five to seven members

4151 beginning with the 2004 regular general election.
4152 (c) The board of education of a school district with a student population of 24,000 or
4153 more students shall consist of seven members.
4154 (d) Student population is based on the October 1 student count submitted by districts to
4155 the State Office of Education.
4156 (e) If the number of members of a local school board is required to change under
4157 Subsection (1)(b), the board shall be reapportioned and elections conducted as provided in
4158 Sections 20A-14-201 and 20A-14-203.
4159 (f) A school district which now has or increases to a seven-member board shall
4160 maintain a seven-member board regardless of subsequent changes in student population.
4161 (g) (i) Members of a local board of education shall be elected at each regular general
4162 election.
4163 (ii) Except as provided in Subsection (1)(g)(iii), no more than three members of a local
4164 board of education may be elected to a five-member board, nor more than four members
4165 elected to a seven-member board, in any election year.
4166 (iii) More than three members of a local board of education may be elected to a
4167 five-member board and more than four members elected to a seven-member board in any
4168 election year only when required by reapportionment or to fill a vacancy or to implement
4169 Subsection (1)(b).
4170 (h) One member of the local board of education shall be elected from each local school
4171 board district.
4172 (2) (a) For an election held after the 2008 general election, a person seeking election to
4173 a local school board [~~must~~] shall have been a resident of the local school board district in
4174 which the person is seeking election for at least one year as of the date of the election.
4175 (b) A person who has resided within the local school board district, as the boundaries
4176 of the district exist on the date of the election, for one year immediately preceding the date of
4177 the election shall be considered to have met the requirements of this Subsection (2).
4178 (3) A member of a local school board shall:
4179 (a) be and remain a registered voter in the local school board district from which the
4180 member is elected or appointed; and
4181 (b) maintain the member's primary residence within the local school board district from

4182 which the member is elected or appointed during the member's term of office.
4183 (4) A member of a local school board may not, during the member's term in office, also
4184 serve as an employee of that board.
4185 Section 91. Section **22-1-11** is amended to read:
4186 **22-1-11. Transactions prior to May 12, 1925, excepted.**
4187 The provisions of this chapter [~~shall not~~] do not apply to transactions taking place prior
4188 to May 12, 1925.
4189 Section 92. Section **22-3-104** is amended to read:
4190 **22-3-104. Trustee's power to adjust.**
4191 (1) A trustee may adjust between principal and income to the extent the trustee
4192 considers necessary if the trustee invests and manages trust assets as a prudent investor, the
4193 terms of the trust describe the amount that may or [~~must~~] shall be distributed to a beneficiary
4194 by referring to the trust's income, and the trustee determines, after applying the rules in
4195 Subsection 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).
4196 (2) In deciding whether and to what extent to exercise the power conferred by
4197 Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries,
4198 including the following factors to the extent they are relevant:
4199 (a) the nature, purpose, and expected duration of the trust;
4200 (b) the intent of the settlor;
4201 (c) the identity and circumstances of the beneficiaries;
4202 (d) the needs for liquidity, regularity of income, and preservation and appreciation of
4203 capital;
4204 (e) (i) the assets held in the trust;
4205 (ii) the extent to which [~~they~~] the assets consist of financial assets, interests in closely
4206 held enterprises, tangible and intangible personal property, or real property;
4207 (iii) the extent to which an asset is used by a beneficiary; and
4208 (iv) whether an asset was purchased by the trustee or received from the settlor;
4209 (f) the net amount allocated to income under the other sections of this chapter and the
4210 increase or decrease in the value of the principal assets, which the trustee may estimate as to
4211 assets for which market values are not readily available;
4212 (g) whether and to what extent the terms of the trust give the trustee the power to

4213 invade principal or accumulate income or prohibit the trustee from invading principal or
4214 accumulating income, and the extent to which the trustee has exercised a power from time to
4215 time to invade principal or accumulate income;
4216 (h) the actual and anticipated effect of economic conditions on principal and income
4217 and effects of inflation and deflation; and
4218 (i) the anticipated tax consequences of an adjustment.
4219 (3) A trustee may not make an adjustment:
4220 (a) that diminishes the income interest in a trust that requires all of the income to be
4221 paid at least annually to a spouse and for which an estate tax or gift tax marital deduction
4222 would be allowed, in whole or in part, if the trustee did not have the power to make the
4223 adjustment;
4224 (b) that reduces the actuarial value of the income interest in a trust to which a person
4225 transfers property with the intent to qualify for a gift tax exclusion;
4226 (c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed
4227 fraction of the value of the trust assets;
4228 (d) from any amount that is permanently set aside for charitable purposes under a will
4229 or the terms of a trust unless both income and principal are so set aside;
4230 (e) if possessing or exercising the power to make an adjustment causes an individual to
4231 be treated as the owner of all or part of the trust for income tax purposes, and the individual
4232 would not be treated as the owner if the trustee did not possess the power to make an
4233 adjustment;
4234 (f) if possessing or exercising the power to make an adjustment causes all or part of the
4235 trust assets to be included for estate tax purposes in the estate of an individual who has the
4236 power to remove a trustee or appoint a trustee, or both, and the assets would not be included in
4237 the estate of the individual if the trustee did not possess the power to make an adjustment;
4238 (g) if the trustee is a beneficiary of the trust; or
4239 (h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee
4240 directly or indirectly.
4241 (4) If Subsection (3)(e), (f), (g), or (h) applies to a trustee and there is more than one
4242 trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the
4243 exercise of the power by the remaining trustee or trustees is not permitted by the terms of the

4244 trust.
4245 (5) A trustee may release the entire power conferred by Subsection (1) or may release
4246 only the power to adjust from income to principal or the power to adjust from principal to
4247 income if the trustee is uncertain about whether possessing or exercising the power will cause a
4248 result described in Subsections (3)(a) through (f) or Subsection (3)(h) or if the trustee
4249 determines that possessing or exercising the power will or may deprive the trust of a tax benefit
4250 or impose a tax burden not described in Subsection (3). The release may be permanent or for a
4251 specified period, including a period measured by the life of an individual.
4252 (6) Terms of a trust that limit the power of a trustee to make an adjustment between
4253 principal and income do not affect the application of this section unless it is clear from the
4254 terms of the trust that the terms are intended to deny the trustee the power of adjustment
4255 conferred by Subsection (1).
4256 Section 93. Section **22-3-202** is amended to read:
4257 **22-3-202. Distribution to residuary and remainder beneficiaries.**
4258 (1) Each beneficiary described in Subsection 22-3-201(4) is entitled to receive a
4259 portion of the net income equal to the beneficiary's fractional interest in undistributed principal
4260 assets, using values as of the distribution date. If a fiduciary makes more than one distribution
4261 of assets to beneficiaries to whom this section applies, each beneficiary, including one who
4262 does not receive part of the distribution, is entitled, as of each distribution date, to the net
4263 income the fiduciary has received after the date of death or terminating event or earlier
4264 distribution date but has not distributed as of the current distribution date.
4265 (2) In determining a beneficiary's share of net income, the following rules apply:
4266 (a) The beneficiary is entitled to receive a portion of the net income equal to the
4267 beneficiary's fractional interest in the undistributed principal assets immediately before the
4268 distribution date, including assets that later may be sold to meet principal obligations.
4269 (b) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall
4270 be calculated without regard to property specifically given to a beneficiary and property
4271 required to pay pecuniary amounts not in trust.
4272 (c) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall
4273 be calculated on the basis of the aggregate value of those assets as of the distribution date
4274 without reducing the value by any unpaid principal obligation.

4275 (d) The distribution date for purposes of this section may be the date as of which the
4276 fiduciary calculates the value of the assets if that date is reasonably near the date on which
4277 assets are actually distributed.
4278 (3) If a fiduciary does not distribute all of the collected but undistributed net income to
4279 each person as of a distribution date, the fiduciary shall maintain appropriate records showing
4280 the interest of each beneficiary in that net income.
4281 (4) A fiduciary may apply the rules in this section, to the extent that the fiduciary
4282 considers it appropriate, to net gain or loss realized after the date of death or terminating event
4283 or earlier distribution date from the disposition of a principal asset if this section applies to the
4284 income from the asset.
4285 Section 94. Section **22-3-302** is amended to read:
4286 **22-3-302. Apportionment of receipts and disbursements when decedent dies or**
4287 **income interest begins.**
4288 (1) A trustee shall allocate an income receipt or disbursement other than one to which
4289 Subsection 22-3-201(1) applies to principal if its due date occurs before a decedent dies in the
4290 case of an estate or before an income interest begins in the case of a trust or successive income
4291 interest.
4292 (2) A trustee shall allocate an income receipt or disbursement to income if its due date
4293 occurs on or after the date on which a decedent dies or an income interest begins and it is a
4294 periodic due date. An income receipt or disbursement [~~must~~] shall be treated as accruing from
4295 day to day if its due date is not periodic or it has no due date. The portion of the receipt or
4296 disbursement accruing before the date on which a decedent dies or an income interest begins
4297 [~~must~~] shall be allocated to principal and the balance [~~must~~] shall be allocated to income.
4298 (3) An item of income or an obligation is due on the date the payer is required to make
4299 a payment. If a payment date is not stated, there is no due date for the purposes of this chapter.
4300 Distributions to shareholders or other owners from an entity to which Section 22-3-401 applies
4301 are considered to be due on the date fixed by the entity for determining who is entitled to
4302 receive the distribution or, if no date is fixed, on the declaration date for the distribution. A
4303 due date is periodic for receipts or disbursements that must be paid at regular intervals under a
4304 lease or an obligation to pay interest or if an entity customarily makes distributions at regular
4305 intervals.

4306 Section 95. Section **22-3-303** is amended to read:
4307 **22-3-303. Apportionment when income interest ends.**
4308 (1) In this section, "undistributed income" means net income received before the date
4309 on which an income interest ends. The term does not include an item of income or expense
4310 that is due or accrued or net income that has been added or is required to be added to principal
4311 under the terms of the trust.
4312 (2) When a mandatory income interest ends, the trustee shall pay to a mandatory
4313 income beneficiary who survives that date, or the estate of a deceased mandatory income
4314 beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed
4315 income that is not disposed of under the terms of the trust unless the beneficiary has an
4316 unqualified power to revoke more than 5% of the trust immediately before the income interest
4317 ends. In the latter case, the undistributed income from the portion of the trust that may be
4318 revoked [~~must~~] shall be added to principal.
4319 (3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of
4320 the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by
4321 applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate,
4322 or other tax requirements.
4323 Section 96. Section **22-3-403** is amended to read:
4324 **22-3-403. Receipts from entities -- Business and other activities conducted by**
4325 **trustee.**
4326 (1) If a trustee who conducts a business or other activity determines that it is in the best
4327 interest of all the beneficiaries to account separately for the business or activity instead of
4328 accounting for it as part of the trust's general accounting records, the trustee may maintain
4329 separate accounting records for its transactions, whether or not its assets are segregated from
4330 other trust assets.
4331 (2) A trustee who accounts separately for a business or other activity may determine
4332 the extent to which its net cash receipts [~~must~~] shall be retained for working capital, the
4333 acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the
4334 business or activity, and the extent to which the remaining net cash receipts are accounted for
4335 as principal or income in the trust's general accounting records. If a trustee sells assets of the
4336 business or other activity, other than in the ordinary course of the business or activity, the

4337 trustee shall account for the net amount received as principal in the trust's general accounting
4338 records to the extent the trustee determines that the amount received is no longer required in
4339 the conduct of the business.
4340 (3) Activities for which a trustee may maintain separate accounting records include:
4341 (a) retail, manufacturing, service, and other traditional business activities;
4342 (b) farming;
4343 (c) raising and selling livestock and other animals;
4344 (d) management of rental properties;
4345 (e) extraction of minerals and other natural resources;
4346 (f) timber operations; and
4347 (g) activities to which Section 22-3-414 applies.
4348 Section 97. Section **22-3-405** is amended to read:
4349 **22-3-405. Receipts not normally apportioned -- Rental property.**
4350 To the extent that a trustee accounts for receipts from rental property pursuant to this
4351 section, the trustee shall allocate to income an amount received as rent of real or personal
4352 property, including an amount received for cancellation or renewal of a lease. An amount
4353 received as a refundable deposit, including a security deposit or a deposit that is to be applied
4354 as rent for future periods, [~~must~~] shall be added to principal and held subject to the terms of the
4355 lease and is not available for distribution to a beneficiary until the trustee's contractual
4356 obligations have been satisfied with respect to that amount.
4357 Section 98. Section **22-3-406** is amended to read:
4358 **22-3-406. Receipts not normally apportioned -- Obligation to pay money.**
4359 (1) An amount received as interest, whether determined at a fixed, variable, or floating
4360 rate, on an obligation to pay money to the trustee, including an amount received as
4361 consideration for prepaying principal, [~~must~~] shall be allocated to income without any
4362 provision for amortization of premium.
4363 (2) A trustee shall allocate to principal an amount received from the sale, redemption,
4364 or other disposition of an obligation to pay money to the trustee more than one year after it is
4365 purchased or acquired by the trustee, including an obligation whose purchase price or value
4366 when it is acquired is less than its value at maturity. If the obligation matures within one year
4367 after it is purchased or acquired by the trustee, an amount received in excess of its purchase

4368 price or its value when acquired by the trust [~~must~~] shall be allocated to income.
4369 (3) This section does not apply to an obligation to which Section 22-3-409, 22-3-410,
4370 22-3-411, 22-3-412, 22-3-414, or 22-3-415 applies.
4371 Section 99. Section **22-3-411** is amended to read:
4372 **22-3-411. Receipts normally apportioned -- Minerals, water, and other natural**
4373 **resources.**
4374 (1) To the extent that a trustee accounts for receipts from an interest in minerals or
4375 other natural resources pursuant to this section, the trustee shall allocate them as follows:
4376 (a) If received as nominal delay rental or nominal annual rent on a lease, a receipt
4377 [~~must~~] shall be allocated to income.
4378 (b) If received from a production payment, a receipt [~~must~~] shall be allocated to income
4379 if and to the extent that the agreement creating the production payment provides a factor for
4380 interest or its equivalent. The balance [~~must~~] shall be allocated to principal.
4381 (c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment,
4382 bonus, or delay rental is more than nominal, 90% [~~must~~] shall be allocated to principal and the
4383 balance to income.
4384 (d) If an amount is received from a working interest or any other interest not provided
4385 for in Subsection (1)(a), (b), or (c), 90% of the net amount received [~~must~~] shall be allocated to
4386 principal and the balance to income.
4387 (2) An amount received on account of an interest in water that is renewable [~~must~~]
4388 shall be allocated to income. If the water is not renewable, 90% of the amount [~~must~~] shall be
4389 allocated to principal and the balance to income.
4390 (3) This chapter applies whether or not a decedent or donor was extracting minerals,
4391 water, or other natural resources before the interest became subject to the trust.
4392 (4) If a trust owns an interest in minerals, water, or other natural resources on May 3,
4393 2004, the trustee may allocate receipts from the interest as provided in this chapter or in the
4394 manner used by the trustee before May 3, 2004. If the trust acquires an interest in minerals,
4395 water, or other natural resources after May 3, 2004, the trustee shall allocate receipts from the
4396 interest as provided in this chapter.
4397 Section 100. Section **22-3-414** is amended to read:
4398 **22-3-414. Receipts normally apportioned -- Derivatives and options.**

4399 (1) In this section, "derivative" means a contract or financial instrument or a
4400 combination of contracts and financial instruments which gives a trust the right or obligation to
4401 participate in some or all changes in the price of a tangible or intangible asset or group of
4402 assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or
4403 a group of assets.
4404 (2) To the extent that a trustee does not account under Section 22-3-403 for
4405 transactions in derivatives, the trustee shall allocate to principal receipts from and
4406 disbursements made in connection with those transactions.
4407 (3) If a trustee grants an option to buy property from the trust, whether or not the trust
4408 owns the property when the option is granted, grants an option that permits another person to
4409 sell property to the trust, or acquires an option to buy property for the trust or an option to sell
4410 an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the
4411 asset if the option is exercised, an amount received for granting the option [~~must~~] shall be
4412 allocated to principal. An amount paid to acquire the option [~~must~~] shall be paid from
4413 principal. A gain or loss realized upon the exercise of an option, including an option granted to
4414 a settlor of the trust for services rendered, [~~must~~] shall be allocated to principal.
4415 Section 101. Section **22-3-505** is amended to read:
4416 **22-3-505. Income taxes.**
4417 (1) A tax required to be paid by a trustee based on receipts allocated to income [~~must~~]
4418 shall be paid from income.
4419 (2) A tax required to be paid by a trustee based on receipts allocated to principal [~~must~~]
4420 shall be paid from principal, even if the tax is called an income tax by the taxing authority.
4421 (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable
4422 income [~~must~~] shall be paid:
4423 (a) from income to the extent that receipts from the entity are allocated only to income;
4424 (b) from principal to the extent that receipts from the entity are allocated only to
4425 principal;
4426 (c) proportionately from principal and income to the extent that receipts from the entity
4427 are allocated to both income and principal; and
4428 (d) from principal to the extent that the tax exceeds the total receipts from the entity.
4429 (4) After applying Subsections (1) through (3), the trustee shall adjust income or

4430 principal receipts to the extent that the trust's taxes are reduced because the trust receives a
4431 deduction for payments made to a beneficiary.
4432 Section 102. Section **22-3-506** is amended to read:
4433 **22-3-506. Adjustments between principal and income because of taxes.**
4434 (1) A fiduciary may make adjustments between principal and income to offset the
4435 shifting of economic interests or tax benefits between income beneficiaries and remainder
4436 beneficiaries which arise from:
4437 (a) elections and decisions, other than those described in Subsection (2), that the
4438 fiduciary makes from time to time regarding tax matters;
4439 (b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as
4440 a result of a transaction involving or a distribution from the estate or trust; or
4441 (c) the ownership by an estate or trust of an interest in an entity whose taxable income,
4442 whether or not distributed, is includable in the taxable income of the estate, trust, or a
4443 beneficiary.
4444 (2) If the amount of an estate tax marital deduction or charitable contribution deduction
4445 is reduced because a fiduciary deducts an amount paid from principal for income tax purposes
4446 instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal
4447 are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each
4448 estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the
4449 principal from which the increase in estate tax is paid. The total reimbursement [~~must~~] shall
4450 equal the increase in the estate tax to the extent that the principal used to pay the increase
4451 would have qualified for a marital deduction or charitable contribution deduction but for the
4452 payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary
4453 whose income taxes are reduced [~~must~~] shall be the same as its proportionate share of the total
4454 decrease in income tax. An estate or trust shall reimburse principal from income.
4455 Section 103. Section **22-3-601** is amended to read:
4456 **22-3-601. Uniformity of application and construction.**
4457 In applying and construing this chapter, consideration [~~must~~] shall be given to the need
4458 to promote uniformity of the law with respect to its subject matter among states that enact it.
4459 Section 104. Section **23-13-2** is amended to read:
4460 **23-13-2. Definitions.**

4461 As used in this title:
4462 (1) "Activity regulated under this title" means any act, attempted act, or activity
4463 prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or
4464 the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:
4465 (a) fishing;
4466 (b) hunting;
4467 (c) trapping;
4468 (d) taking;
4469 (e) permitting any dog, falcon, or other domesticated animal to take;
4470 (f) transporting;
4471 (g) possessing;
4472 (h) selling;
4473 (i) wasting;
4474 (j) importing;
4475 (k) exporting;
4476 (l) rearing;
4477 (m) keeping;
4478 (n) utilizing as a commercial venture; and
4479 (o) releasing to the wild.
4480 (2) "Aquatic animal" has the meaning provided in Section 4-37-103.
4481 (3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or
4482 amphibians.
4483 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.
4484 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife
4485 that one person may legally take during one day.
4486 (6) "Big game" means species of hoofed protected wildlife.
4487 (7) "Carcass" means the dead body of an animal or its parts.
4488 (8) "Certificate of registration" means a document issued under this title, or any rule or
4489 proclamation of the Wildlife Board granting authority to engage in activities not covered by a
4490 license, permit, or tag.
4491 (9) "Closed season" means the period of time during which the taking of protected

4492 wildlife is prohibited.
4493 (10) "Conservation officer" means a full-time, permanent employee of the Division of
4494 Wildlife Resources who is POST certified as a peace or a special function officer.
4495 (11) "Dedicated hunter program" means a program that provides:
4496 (a) expanded hunting opportunities;
4497 (b) opportunities to participate in projects that are beneficial to wildlife; and
4498 (c) education in hunter ethics and wildlife management principles.
4499 (12) "Division" means the Division of Wildlife Resources.
4500 (13) (a) "Domicile" means the place:
4501 (i) where an individual has a fixed permanent home and principal establishment;
4502 (ii) to which the individual if absent, intends to return; and
4503 (iii) in which the individual, and the individual's family voluntarily reside, not for a
4504 special or temporary purpose, but with the intention of making a permanent home.
4505 (b) To create a new domicile an individual [~~must~~] shall:
4506 (i) abandon the old domicile; and
4507 (ii) be able to prove that a new domicile has been established.
4508 (14) "Endangered" means wildlife designated as endangered according to Section 3 of
4509 the federal Endangered Species Act of 1973.
4510 (15) "Fee fishing facility" has the meaning provided in Section 4-37-103.
4511 (16) "Feral" means an animal that is normally domesticated but has reverted to the
4512 wild.
4513 (17) "Fishing" means to take fish or crayfish by any means.
4514 (18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and
4515 Castoridae families, except coyote and cougar.
4516 (19) "Game" means wildlife normally pursued, caught, or taken by sporting means for
4517 human use.
4518 (20) "Guide" means a person who receives compensation or advertises services for
4519 assisting another person to take protected wildlife, including the provision of food, shelter, or
4520 transportation, or any combination of these.
4521 (21) "Guide's agent" means a person who is employed by a guide to assist another
4522 person to take protected wildlife.

4523 (22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any
4524 means.
4525 (23) "Intimidate or harass" means to physically interfere with or impede, hinder, or
4526 diminish the efforts of an officer in the performance of the officer's duty.
4527 (24) "Nonresident" means a person who does not qualify as a resident.
4528 (25) "Open season" means the period of time during which protected wildlife may be
4529 legally taken.
4530 (26) "Pecuniary gain" means the acquisition of money or something of monetary value.
4531 (27) "Permit" means a document, including a stamp, that grants authority to engage in
4532 specified activities under this title or a rule or proclamation of the Wildlife Board.
4533 (28) "Person" means an individual, association, partnership, government agency,
4534 corporation, or an agent of the foregoing.
4535 (29) "Possession" means actual or constructive possession.
4536 (30) "Possession limit" means the number of bag limits one individual may legally
4537 possess.
4538 (31) (a) "Private fish pond" means a body of water where privately owned, protected
4539 aquatic wildlife are propagated or kept for a noncommercial purpose.
4540 (b) "Private fish pond" does not include an aquaculture facility or fee fishing facility.
4541 (32) "Private wildlife farm" means an enclosed place where privately owned birds or
4542 furbearers are propagated or kept and that restricts the birds or furbearers from:
4543 (a) commingling with wild birds or furbearers; and
4544 (b) escaping into the wild.
4545 (33) "Proclamation" means the publication used to convey a statute, rule, policy, or
4546 pertinent information as it relates to wildlife.
4547 (34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection
4548 (3), except as provided in Subsection (34)(b).
4549 (b) "Protected aquatic wildlife" does not include aquatic insects.
4550 (35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as
4551 provided in Subsection (35)(b).
4552 (b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel,
4553 jack rabbit, muskrat, and raccoon.

4554 (36) "Released to the wild" means to be turned loose from confinement.
4555 (37) (a) "Resident" means a person who:
4556 (i) has been domiciled in the state for six consecutive months immediately preceding
4557 the purchase of a license; and
4558 (ii) does not claim residency for hunting, fishing, or trapping in any other state or
4559 country.
4560 (b) A Utah resident retains Utah residency if that person leaves this state:
4561 (i) to serve in the armed forces of the United States or for religious or educational
4562 purposes; and
4563 (ii) the person complies with Subsection (37)(a)(ii).
4564 (c) (i) A member of the armed forces of the United States and dependents are residents
4565 for the purposes of this chapter as of the date the member reports for duty under assigned
4566 orders in the state if the member:
4567 (A) is not on temporary duty in this state; and
4568 (B) complies with Subsection (37)(a)(ii).
4569 (ii) A copy of the assignment orders [~~must~~] shall be presented to a wildlife division
4570 office to verify the member's qualification as a resident.
4571 (d) A nonresident attending an institution of higher learning in this state as a full-time
4572 student may qualify as a resident for purposes of this chapter if the student:
4573 (i) has been present in this state for 60 consecutive days immediately preceding the
4574 purchase of the license; and
4575 (ii) complies with Subsection (37)(a)(ii).
4576 (e) A Utah resident license is invalid if a resident license for hunting, fishing, or
4577 trapping is purchased in any other state or country.
4578 (f) An absentee landowner paying property tax on land in Utah does not qualify as a
4579 resident.
4580 (38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of
4581 selling, bartering, exchanging, or trading.
4582 (39) "Small game" means species of protected wildlife:
4583 (a) commonly pursued for sporting purposes; and
4584 (b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey,

4585 cougar, and bear.
4586 (40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for
4587 human consumption.
4588 (41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or
4589 other artificial light on any highway or in any field, woodland, or forest while having in
4590 possession a weapon by which protected wildlife may be killed.
4591 (42) "Tag" means a card, label, or other identification device issued for attachment to
4592 the carcass of protected wildlife.
4593 (43) "Take" means to:
4594 (a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected
4595 wildlife; or
4596 (b) attempt any action referred to in Subsection (43)(a).
4597 (44) "Threatened" means wildlife designated as such pursuant to Section 3 of the
4598 federal Endangered Species Act of 1973.
4599 (45) "Trapping" means taking protected wildlife with a trapping device.
4600 (46) "Trophy animal" means an animal described as follows:
4601 (a) deer - a buck with an outside antler measurement of 24 inches or greater;
4602 (b) elk - a bull with six points on at least one side;
4603 (c) bighorn, desert, or rocky mountain sheep - a ram with a curl exceeding half curl;
4604 (d) moose - a bull with at least one antler exceeding five inches in length;
4605 (e) mountain goat - a male or female;
4606 (f) pronghorn antelope - a buck with horns exceeding 14 inches; or
4607 (g) bison - a bull.
4608 (47) "Waste" means to abandon protected wildlife or to allow protected wildlife to
4609 spoil or to be used in a manner not normally associated with its beneficial use.
4610 (48) "Water pollution" means the introduction of matter or thermal energy to waters
4611 within this state that:
4612 (a) exceeds state water quality standards; or
4613 (b) could be harmful to protected wildlife.
4614 (49) "Wildlife" means:
4615 (a) crustaceans, including brine shrimp and crayfish;

4616 (b) mollusks; and
4617 (c) vertebrate animals living in nature, except feral animals.
4618 Section 105. Section **23-13-17** is amended to read:
4619 **23-13-17. Spotlighting of coyote, red fox, striped skunk, and raccoon -- County**
4620 **ordinances -- Permits.**
4621 (1) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where
4622 allowed by a county ordinance enacted pursuant to this section.
4623 (2) The ordinance shall provide that:
4624 (a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon
4625 [~~must~~] shall be carried by the hunter;
4626 (b) a motor vehicle headlight or light attached to or powered by a motor vehicle may
4627 not be used to spotlight the animal; and
4628 (c) while hunting with the use of an artificial light, the hunter may not occupy or
4629 operate any motor vehicle.
4630 (3) For purposes of the county ordinance, "motor vehicle" shall have the meaning as
4631 defined in Section 41-6a-102.
4632 (4) The ordinance may specify:
4633 (a) the time of day and seasons when spotlighting is permitted;
4634 (b) areas closed or open to spotlighting within the unincorporated area of the county;
4635 (c) safety zones within which spotlighting is prohibited;
4636 (d) the weapons permitted; and
4637 (e) penalties for violation of the ordinance.
4638 (5) (a) A county may restrict the number of hunters engaging in spotlighting by
4639 requiring a permit to spotlight and issuing a limited number of permits.
4640 (b) (i) A fee may be charged for a spotlighting permit.
4641 (ii) Any permit fee shall be established by the county ordinance.
4642 (iii) Revenues generated by the permit fee shall be remitted to the Division of Wildlife
4643 Resources for deposit into the Wildlife Resources Account, except the Wildlife Board may
4644 allow any county that enacts an ordinance pursuant to this section to retain a reasonable amount
4645 to pay for the costs of administering and enforcing the ordinance, provided this use of the
4646 permit revenues does not affect federal funds received by the state under 16 U.S.C. Sec. 669 et

4647 seq., Wildlife Restoration Act and 16 U.S.C. Sec. 777 et seq., Sport Fish Restoration Act.
4648 (6) A county may require hunters to notify the county sheriff of the time and place they
4649 will be engaged in spotlighting.
4650 (7) The requirement that a county ordinance [~~must~~] shall be enacted before a person
4651 may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:
4652 (a) a person or [~~his~~] the person's agent who is lawfully acting to protect [~~his~~] the
4653 person's crops or domestic animals from predation by those animals; or
4654 (b) an animal damage control agent acting in [~~his~~] the agent's official capacity under a
4655 memorandum of agreement with the division.
4656 Section 106. Section **23-14-2** is amended to read:
4657 **23-14-2. Wildlife Board -- Creation -- Membership -- Terms -- Quorum --**
4658 **Meetings -- Per diem and expenses.**
4659 (1) There is created a Wildlife Board which shall consist of seven members appointed
4660 by the governor with the consent of the Senate.
4661 (2) (a) In addition to the requirements of Section 79-2-203, the members of the board
4662 shall have expertise or experience in at least one of the following areas:
4663 (i) wildlife management or biology;
4664 (ii) habitat management, including range or aquatic;
4665 (iii) business, including knowledge of private land issues; and
4666 (iv) economics, including knowledge of recreational wildlife uses.
4667 (b) Each of the areas of expertise under Subsection (2)(a) shall be represented by at
4668 least one member of the Wildlife Board.
4669 (3) (a) The governor shall select each board member from a list of nominees submitted
4670 by the nominating committee pursuant to Section 23-14-2.5.
4671 (b) No more than two members shall be from a single wildlife region described in
4672 Subsection 23-14-2.6(1).
4673 (c) The governor may request an additional list of at least two nominees from the
4674 nominating committee if the initial list of nominees for a given position is unacceptable.
4675 (d) (i) If the governor fails to appoint a board member within 60 days after receipt of
4676 the initial or additional list, the nominating committee shall make an interim appointment by
4677 majority vote.

4678 (ii) The interim board member shall serve until the matter is resolved by the committee
4679 and the governor or until the board member is replaced pursuant to this chapter.
4680 (4) (a) Except as required by Subsection (4)(b), as terms of current board members
4681 expire, the governor shall appoint each new member or reappointed member to a six-year term.
4682 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
4683 time of appointment or reappointment, adjust the length of terms to ensure that:
4684 (i) the terms of board members are staggered so that approximately [~~1/3~~] one-third of
4685 the board is appointed every two years; and
4686 (ii) members serving from the same region have staggered terms.
4687 (c) If a vacancy occurs, the nominating committee shall submit two names, as provided
4688 in Subsection 23-14-2.5(4), to the governor and the governor shall appoint a replacement for
4689 the unexpired term.
4690 (d) Board members may serve only one term unless:
4691 (i) the member is among the first board members appointed to serve four years or less;
4692 or
4693 (ii) the member filled a vacancy under Subsection (4)(c) for four years or less.
4694 (5) (a) The board shall elect a chair and a vice chair from its membership.
4695 (b) Four members of the board shall constitute a quorum.
4696 (c) The director of the Division of Wildlife Resources shall act as secretary to the
4697 board but [~~shall not be~~] is not a voting member of the board.
4698 (6) (a) The Wildlife Board shall hold a sufficient number of public meetings each year
4699 to expeditiously conduct its business.
4700 (b) Meetings may be called by the chair upon five days notice or upon shorter notice in
4701 emergency situations.
4702 (c) Meetings may be held at the Salt Lake City office of the Division of Wildlife
4703 Resources or elsewhere as determined by the Wildlife Board.
4704 (7) A member may not receive compensation or benefits for the member's service, but
4705 may receive per diem and travel expenses in accordance with:
4706 (a) Section 63A-3-106;
4707 (b) Section 63A-3-107; and
4708 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

4709 63A-3-107.
4710 (8) (a) The members of the Wildlife Board shall complete an orientation course to
4711 assist them in the performance of the duties of their office.
4712 (b) The Department of Natural Resources shall provide the course required under
4713 Subsection (8)(a).
4714 Section 107. Section **23-15-2** is amended to read:
4715 **23-15-2. Jurisdiction of division over public or private land and waters.**
4716 All wildlife within this state, including [~~but not limited to~~] wildlife on public or private
4717 land or in public or private waters within this state, shall fall within the jurisdiction of the
4718 Division of Wildlife Resources.
4719 Section 108. Section **23-15-9** is amended to read:
4720 **23-15-9. Possession or transportation of live aquatic wildlife unlawful except as**
4721 **authorized -- Exceptions.**
4722 It is unlawful for any person to possess or transport live protected aquatic wildlife
4723 except as provided by this code or the rules and regulations of the Wildlife Board. This section
4724 [~~shall not~~] does not apply to tropical and goldfish species intended for exhibition or
4725 commercial purposes. Operators of a properly registered private fish pond may transport live
4726 aquatic wildlife specified by the Wildlife Board in the operator's certificate of registration.
4727 Section 109. Section **23-16-3** is amended to read:
4728 **23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation**
4729 **equipment by big game animals -- Notice to division.**
4730 (1) (a) If big game animals are damaging cultivated crops, livestock forage, fences, or
4731 irrigation equipment on private land, the landowner or lessee shall immediately, upon
4732 discovery of the damage, request that the division take action to alleviate the depredation
4733 problem.
4734 (b) The landowner or lessee shall allow division personnel reasonable access to the
4735 property sustaining damage to verify and alleviate the depredation problem.
4736 (2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a),
4737 the division shall investigate the situation, and if it appears that depredation by big game
4738 animals may continue, the division shall:
4739 (i) remove the big game animals causing depredation; or

4740 (ii) implement a depredation mitigation plan which has been approved, in writing, by
4741 the landowner or lessee.
4742 (b) A depredation mitigation plan may provide for any or all of the following:
4743 (i) the scheduling of a depredation hunt;
4744 (ii) issuing permits to the landowners or lessees, to take big game animals causing
4745 depredation during a general or special season hunt authorized by the Wildlife Board;
4746 (iii) allowing landowners or lessees to designate recipients who may obtain a
4747 mitigation permit to take big game animals on the landowner's or lessee's land during a general
4748 or special season hunt authorized by the Wildlife Board; or
4749 (iv) a description of how the division will assess and compensate the landowner or
4750 lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.
4751 (c) (i) The division shall specify the number and sex of the big game animals that may
4752 be taken pursuant to Subsections (2)(b)(ii) and (iii).
4753 (ii) Control efforts shall be directed toward antlerless animals, if possible.
4754 (d) A permit issued for an antlered animal [~~must~~] shall be approved by the division
4755 director or the director's designee.
4756 (e) The division and the landowner or lessee shall jointly determine the number of
4757 animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may retain
4758 possession.
4759 (f) In determining appropriate remedial action under this Subsection (2), the division
4760 shall consider:
4761 (i) the extent of damage experienced or expected; and
4762 (ii) any revenue the landowner derives from:
4763 (A) participation in a cooperative wildlife management unit;
4764 (B) use of landowner association permits;
4765 (C) use of mitigation permits; and
4766 (D) charging for hunter access.
4767 (3) Any fee for accessing the owner's or lessee's land shall be determined by the
4768 landowner or lessee.
4769 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under
4770 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or

4771 lessee may revoke his or her approval of the plan and again request that the division take action
4772 pursuant to Subsection (2)(a)(i).
4773 (b) A subsequent request for action provided under Subsection (4)(a) shall be
4774 considered to be a new request for purposes of the 72-hour time limit specified in Subsection
4775 (2)(a).
4776 (5) (a) The division may enter into a conservation lease with the owner or lessee of
4777 private lands for a fee or other remuneration as compensation for depredation.
4778 (b) Any conservation lease entered into under this section shall provide that the
4779 claimant may not unreasonably restrict hunting on the land or passage through the land to
4780 access public lands for the purpose of hunting, if those actions are necessary to control or
4781 mitigate damage by big game.
4782 Section 110. Section **23-16-4** is amended to read:
4783 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**
4784 **Limitations -- Appeals.**
4785 (1) The division may provide compensation to claimants for damage caused by big
4786 game to:
4787 (a) cultivated crops from or on cleared and planted land;
4788 (b) fences on private land; or
4789 (c) irrigation equipment on private land.
4790 (2) To be eligible to receive compensation as provided in this section, the claimant
4791 shall:
4792 (a) [~~must~~] notify the division of the damage within 72 hours after the damage is
4793 discovered; and
4794 (b) allow division personnel reasonable access to the property to verify and alleviate
4795 the depredation problem.
4796 (3) (a) The appraisal of the damage shall be made by the claimant and the division as
4797 soon after notification as possible.
4798 (b) In determining damage payment, the division and claimant shall consider:
4799 (i) the extent of damage experienced; and
4800 (ii) any revenue the landowner derives from:
4801 (A) participation in a cooperative wildlife management unit;

4802 (B) use of landowner association permits;
4803 (C) use of mitigation permits; and
4804 (D) charging for hunter access.
4805 (c) In determining how to assess and compensate for damages to cultivated crops, the
4806 division's determination shall be based on the:
4807 (i) full replacement value in the local market of the cultivated crops that actually have
4808 been or will be damaged or consumed by big game animals; and
4809 (ii) cost of delivery of a replacement crop to the location of the damaged crop or other
4810 location that is not farther from the source of the replacement crop.
4811 (d) If the claimant and the division are unable to agree on a fair and equitable damage
4812 payment, they shall designate a third party, consisting of one or more persons familiar with the
4813 crops, fences, or irrigation equipment and the type of game animals doing the damage, to
4814 appraise the damage.
4815 (4) (a) Notwithstanding Section 63J-1-504, the total amount of compensation that may
4816 be provided by the division pursuant to this section and the total cost of fencing materials
4817 provided by the division to prevent crop damage may not exceed the legislative appropriation
4818 for fencing material and compensation for damaged crops, fences, and irrigation equipment.
4819 (b) (i) Any claim of $1,000 or less may be paid after appraisal of the damage as
4820 provided in Subsection (3), unless the claim brings the total amount of claims submitted by the
4821 claimant in the fiscal year to an amount in excess of $1,000.
4822 (ii) Any claim for damage to irrigation equipment may be paid after appraisal of the
4823 damage as provided in Subsection (3).
4824 (c) (i) Any claim in excess of $1,000, or claim that brings the total amount of claims
4825 submitted by the claimant in the fiscal year to an amount in excess of $1,000, shall be treated
4826 as follows:
4827 (A) $1,000 may be paid pursuant to the conditions of this section; and
4828 (B) the amount in excess of $1,000 may not be paid until the total amount of the
4829 approved claims of all the claimants and expenses for fencing materials for the fiscal year are
4830 determined.
4831 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to
4832 Subsection (4)(a), claims in excess of $1,000, or any claim that brings the total amount of a

4833 claimant's claims in a fiscal year to an amount in excess of $1,000, shall be prorated.
4834 (5) The division may deny or limit compensation if the claimant:
4835 (a) has failed to exercise reasonable care and diligence to avoid the loss or minimize
4836 the damage; or
4837 (b) has unreasonably restricted hunting on land under the claimant's control or passage
4838 through the land to access public lands for the purpose of hunting, after receiving written
4839 notification from the division of the necessity of allowing such hunting or access to control or
4840 mitigate damage by big game.
4841 (6) (a) The Wildlife Board shall make rules specifying procedures for the appeal of
4842 division actions under this section.
4843 (b) Upon the petition of an aggrieved party to a final division action, the Wildlife
4844 Board may review the action on the record and issue an order modifying or rescinding the
4845 division action.
4846 (c) A qualified hearing examiner may be appointed for purposes of taking evidence and
4847 making recommendations for a board order. The board shall consider the recommendations of
4848 the examiner in making decisions.
4849 (d) Board review of final agency action and judicial review of final board action shall
4850 be governed by Title 63G, Chapter 4, Administrative Procedures Act.
4851 Section 111. Section **23-17-4** is amended to read:
4852 **23-17-4. Crop damage by pheasants -- Notice to division.**
4853 Whenever pheasants are damaging cultivated crops on cleared and planted land, the
4854 owner of such crops shall immediately upon discovery of such damage notify the Division of
4855 Wildlife Resources. This notice [~~must~~] shall be made both orally and in writing. Upon being
4856 notified of such damage, the Division of Wildlife Resources shall, as far as possible, control
4857 such damage.
4858 Section 112. Section **23-17-6** is amended to read:
4859 **23-17-6. Commercial hunting area -- Registration -- Requirements for hunters.**
4860 (1) (a) Any person desiring to operate a commercial hunting area within this state to
4861 permit the releasing and shooting of pen-raised birds may apply to the Wildlife Board for
4862 authorization to do so.
4863 (b) The Wildlife Board may issue the applicant a certificate of registration to operate a

4864 commercial hunting area in accordance with rules prescribed by the board.
4865 (c) The Wildlife Board may determine the number of commercial hunting areas that
4866 may be established in each county of the state.
4867 (2) Any certificate of registration issued under Subsection (1) shall specify the species
4868 of birds that the applicant may propagate, keep, and release for shooting on the area covered by
4869 the certificate of registration. The applicant may charge a fee for harvesting these birds.
4870 (3)(a) Any person hunting within the state on any commercial hunting area [~~must~~]
4871 shall:
4872 (i) be at least 12 years old;
4873 (ii) possess proof of passing a division-approved hunter education course, if the person
4874 was born after December 31, 1965; and
4875 (iii) have the permission of the owner or operator of the commercial hunting area.
4876 (b) The operator of a commercial hunting area shall verify that each hunter on the
4877 commercial hunting area meets the requirements of Subsections (3)(a)(i) and (3)(a)(ii).
4878 (4) Hunting on commercial hunting areas shall be permitted only during the
4879 commercial hunting area season prescribed by the Wildlife Board.
4880 Section 113. Section **23-17-8** is amended to read:
4881 **23-17-8. Dog field meets.**
4882 It is lawful within the state [~~of Utah~~] to hold dog field meets or trials where dogs are
4883 permitted to work in exhibition or contest where the skill of dogs is demonstrated by locating
4884 or retrieving birds which have been obtained from a legal source. Before any meet or trial is
4885 held, application [~~must~~] shall be made in writing to the Division of Wildlife Resources, which
4886 may authorize the meet or trial under rules and regulations promulgated by the Wildlife Board.
4887 Section 114. Section **23-18-5** is amended to read:
4888 **23-18-5. Fur dealer and fur dealer's agent -- Definitions -- Certificates of**
4889 **registration required -- Receipts required.**
4890 (1) Any person engaging in, carrying on, or conducting, wholly or in part, the business
4891 of buying, selling, trading, or dealing, within the state [~~of Utah~~], in the skins or pelts of
4892 furbearing mammals shall be deemed a fur dealer within the meaning of this code. All fur
4893 dealers [~~must~~] shall secure a fur dealer certificate of registration from the Division of Wildlife
4894 Resources, but no certificate of registration shall be required for a licensed trapper or fur farmer

4895 selling skins or pelts which [~~he~~] the licensed trapper or fur farmer has lawfully taken, or raised,
4896 nor for any person not a fur dealer who purchases any such skins or pelts exclusively for [~~his~~]
4897 the person's own use and not for sale.
4898 (2) Any person who is employed by a resident or nonresident fur dealer as a fur buyer,
4899 in the field, is deemed a fur dealer's agent. Application for a fur dealer's agent certificate of
4900 registration [~~must~~] shall be made by the fur dealer employing the agent, and no agent certificate
4901 of registration shall be issued until the necessary fur dealer certificate of registration has been
4902 first secured by the employer of the agent.
4903 (3) Receipts [~~must~~] shall be issued by the vendor to the vendee whenever the skins or
4904 pelts of furbearing mammals [~~shall~~] change ownership by virtue of sale, exchange, barter or
4905 gift; and both the vendor and vendee shall produce this receipt or evidence of legal transaction
4906 upon request by the Division of Wildlife Resources or other person authorized to enforce the
4907 provisions of this code.
4908 Section 115. Section **23-19-9** is amended to read:
4909 **23-19-9. Suspension of license or permit privileges -- Suspension of certificates of**
4910 **registration.**
4911 (1) As used in this section, "license or permit privileges" means the privilege of
4912 applying for, purchasing, and exercising the benefits conferred by a license or permit issued by
4913 the division.
4914 (2) A hearing officer, appointed by the division, may suspend a person's license or
4915 permit privileges if:
4916 (a) in a court of law, the person:
4917 (i) is convicted of:
4918 (A) violating this title or a rule of the Wildlife Board;
4919 (B) killing or injuring domestic livestock while engaged in an activity regulated under
4920 this title; or
4921 (C) violating Section 76-10-508 while engaged in an activity regulated under this title;
4922 (ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no
4923 contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or
4924 (iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person
4925 enters into a diversion agreement which suspends the prosecution of the offense; and

4926 (b) the hearing officer determines the person committed the offense intentionally,
4927 knowingly, or recklessly, as defined in Section 76-2-103.
4928 (3) (a) The Wildlife Board shall make rules establishing guidelines that a hearing
4929 officer shall consider in determining:
4930 (i) the type of license or permit privileges to suspend; and
4931 (ii) the duration of the suspension.
4932 (b) The Wildlife Board shall ensure that the guidelines established under Subsection
4933 (3)(a) are consistent with Subsections (4), (5), and (6).
4934 (4) Except as provided in Subsections (5) and (6), a hearing officer may suspend a
4935 person's license or permit privileges according to Subsection (2) for a period of time not to
4936 exceed:
4937 (a) seven years for:
4938 (i) a felony conviction;
4939 (ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is
4940 held in abeyance pursuant to a plea in abeyance agreement; or
4941 (iii) being charged with an offense punishable as a felony, the prosecution of which is
4942 suspended pursuant to a diversion agreement;
4943 (b) five years for:
4944 (i) a class A misdemeanor conviction;
4945 (ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor,
4946 which plea is held in abeyance pursuant to a plea in abeyance agreement; or
4947 (iii) being charged with an offense punishable as a class A misdemeanor, the
4948 prosecution of which is suspended pursuant to a diversion agreement;
4949 (c) three years for:
4950 (i) a class B misdemeanor conviction;
4951 (ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor
4952 when the plea is held in abeyance according to a plea in abeyance agreement; or
4953 (iii) being charged with an offense punishable as a class B misdemeanor, the
4954 prosecution of which is suspended pursuant to a diversion agreement; and
4955 (d) one year for:
4956 (i) a class C misdemeanor conviction;

4957 (ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor,
4958 when the plea is held in abeyance according to a plea in abeyance agreement; or
4959 (iii) being charged with an offense punishable as a class C misdemeanor, the
4960 prosecution of which is suspended according to a diversion agreement.
4961 (5) The hearing officer may double a suspension period established in Subsection (4)
4962 for offenses:
4963 (a) committed in violation of an existing suspension or revocation order issued by the
4964 courts, division, or Wildlife Board; or
4965 (b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.
4966 (6) (a) A hearing officer may suspend, according to Subsection (2), a person's license
4967 or permit privileges for a particular license or permit only once for each single criminal
4968 episode, as defined in Section 76-1-401.
4969 (b) If a hearing officer addresses two or more single criminal episodes in a hearing, the
4970 suspension periods of any license or permit privileges of the same type suspended, according to
4971 Subsection (2), may run consecutively.
4972 (c) If a hearing officer suspends, according to Subsection (2), license or permit
4973 privileges of the type that have been previously suspended by a court, a hearing officer, or the
4974 Wildlife Board and the suspension period has not expired, the suspension periods may run
4975 consecutively.
4976 (7) (a) A hearing officer, appointed by the division, may suspend a person's privilege of
4977 applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:
4978 (i) the hearing officer determines the person intentionally, knowingly, or recklessly, as
4979 defined in Section 76-2-103, violated:
4980 (A) this title;
4981 (B) a rule or order of the Wildlife Board;
4982 (C) the terms of a certificate of registration; or
4983 (D) the terms of a certificate of registration application or agreement; or
4984 (ii) the person, in a court of law:
4985 (A) is convicted of an offense that the hearing officer determines bears a reasonable
4986 relationship to the person's ability to safely and responsibly perform the activities authorized by
4987 the certificate of registration;

4988 (B) pleads guilty or no contest to an offense that the hearing officer determines bears a
4989 reasonable relationship to the person's ability to safely and responsibly perform the activities
4990 authorized by the certificate of registration, and the plea is held in abeyance in accordance with
4991 a plea in abeyance agreement; or
4992 (C) is charged with an offense that the hearing officer determines bears a reasonable
4993 relationship to the person's ability to safely and responsibly perform the activities authorized by
4994 the certificate of registration, and prosecution of the offense is suspended in accordance with a
4995 diversion agreement.
4996 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in
4997 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the
4998 holder of the certificates of registration has violated Section 59-23-5.
4999 (8) (a) The director shall appoint a qualified person as a hearing officer to perform the
5000 adjudicative functions provided in this section.
5001 (b) The director may not appoint a division employee who investigates or enforces
5002 wildlife violations.
5003 (9) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply
5004 for, purchase, or exercise the benefits conferred by a license, permit, or certificate of
5005 registration.
5006 (b) The courts shall promptly notify the division of any suspension orders or
5007 recommendations entered.
5008 (c) The division, upon receiving notification of suspension from the courts, shall
5009 prohibit the person from applying for, purchasing, or exercising the benefits conferred by a
5010 license, permit, or certification of registration for the duration and of the type specified in the
5011 court order.
5012 (d) The hearing officer shall consider any recommendation made by a sentencing court
5013 concerning suspension before issuing a suspension order.
5014 (10) (a) A person may not apply for, purchase, possess, or attempt to exercise the
5015 benefits conferred by any permit, license, or certificate of registration specified in an order of
5016 suspension while that order is in effect.
5017 (b) Any license possessed or obtained in violation of the order shall be considered
5018 invalid.

5019 (c) A person who violates Subsection (10)(a) is guilty of a class B misdemeanor.
5020 (11) Before suspension under this section, a person [~~must~~] shall be:
5021 (a) given written notice of any action the division intends to take; and
5022 (b) provided with an opportunity for a hearing.
5023 (12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife
5024 Board.
5025 (b) The Wildlife Board shall review the hearing officer's findings and conclusions and
5026 any written documentation submitted at the hearing.
5027 (c) The Wildlife Board may:
5028 (i) take no action;
5029 (ii) vacate or remand the decision; or
5030 (iii) amend the period or type of suspension.
5031 (13) The division shall suspend and reinstate all hunting, fishing, trapping, and
5032 falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.
5033 (14) The Wildlife Board may make rules to implement this section in accordance with
5034 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
5035 Section 116. Section **23-19-14** is amended to read:
5036 **23-19-14. Persons residing in certain institutions authorized to fish without**
5037 **license.**
5038 (1) The Division of Wildlife Resources shall permit a person to fish without a license
5039 if:
5040 (a) (i) the person resides in:
5041 (A) the Utah State Developmental Center in American Fork;
5042 (B) the state hospital;
5043 (C) a veteran's hospital;
5044 (D) a veteran's nursing home;
5045 (E) a mental health center;
5046 (F) an intermediate care facility for the mentally retarded;
5047 (G) a group home licensed by the Department of Human Services and operated under
5048 contract with the Division of Services for People with Disabilities;
5049 (H) a group home or other community-based placement licensed by the Department of

5050 Human Services and operated under contract with the Division of Juvenile Justice Services;
5051 (I) a private residential facility for at-risk youth licensed by the Department of Human
5052 Services; or
5053 (J) another similar institution approved by the division; or
5054 (ii) the person is a youth who participates in a work camp operated by the Division of
5055 Juvenile Justice Services;
5056 (b) the person is properly supervised by a representative of the institution; and
5057 (c) the institution obtains from the division a certificate of registration that specifies:
5058 (i) the date and place where the person will fish; and
5059 (ii) the name of the institution's representative who will supervise the person fishing.
5060 (2) The institution [~~must~~] shall apply for the certificate of registration at least 10 days
5061 before the fishing outing.
5062 (3) (a) An institution that receives a certificate of registration authorizing at-risk youth
5063 to fish shall provide instruction to the youth on fishing laws and regulations.
5064 (b) The division shall provide educational materials to the institution to assist it in
5065 complying with Subsection (3)(a).
5066 Section 117. Section **23-19-17.5** is amended to read:
5067 **23-19-17.5. Lifetime hunting and fishing licenses.**
5068 (1) Lifetime licensees born after December 31, 1965, [~~must~~] shall be certified under
5069 Section 23-19-11 before engaging in hunting.
5070 (2) A lifetime license shall remain valid if the residency of the lifetime licensee
5071 changes to another state or country.
5072 (3) (a) A lifetime license may be used in lieu of a hunting or fishing license.
5073 (b) Each year, a lifetime licensee is entitled to receive without charge a permit and tag
5074 of the lifetime licensee's choice for one of the following general season deer hunts:
5075 (i) archery;
5076 (ii) rifle; or
5077 (iii) muzzleloader.
5078 (c) A lifetime licensee is subject to each requirement for special hunting and fishing
5079 permits and tags, except as provided in Subsections (3)(a) and (b).
5080 (4) The Wildlife Board may adopt rules necessary to carry out the provisions of this

5081 section.
5082 Section 118. Section **23-19-38.2** is amended to read:
5083 **23-19-38.2. Refunds for armed forces or public health or safety organization**
5084 **members -- Criteria.**
5085 (1) A member of the United States Armed Forces or public health or public safety
5086 organization who is mobilized or deployed on order in the interest of national defense or
5087 emergency and is precluded from using a purchased license, certificate, tag, or permit, may, as
5088 provided in Subsection (2):
5089 (a) receive a refund from the division; and
5090 (b) if the person has drawn a permit, have all opportunities to draw that permit in a
5091 future draw reinstated.
5092 (2) To qualify, the person or a legal representative [~~must~~] shall:
5093 (a) notify the division within a reasonable amount of time that the person is applying
5094 for a refund;
5095 (b) surrender the license, certificate, tag, or permit to the division; and
5096 (c) furnish satisfactory proof to the division that the person:
5097 (i) is a member of:
5098 (A) the United States Armed Forces;
5099 (B) a public health organization; or
5100 (C) a public safety organization; and
5101 (ii) was precluded from using the license, certificate, tag, or permit as a result of being
5102 called to active duty.
5103 (3) The Wildlife Board may adopt rules in accordance with Title 63G, Chapter 3, Utah
5104 Administrative Rulemaking Act, necessary to administer this section including allowing
5105 retroactive refund to September 11, 2001.
5106 Section 119. Section **23-20-1** is amended to read:
5107 **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition**
5108 **of property.**
5109 (1) Conservation officers of the division shall enforce the provisions of this title with
5110 the same authority and following the same procedures as other law enforcement officers.
5111 (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

5112 (b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife
5113 shall be confiscated by the court and sold or otherwise disposed of by the division.
5114 (ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.
5115 (iii) Migratory wildfowl may not be sold, but [~~must~~] shall be given to a charitable
5116 institution or used for other charitable purposes.
5117 (3) Materials and devices used for the unlawful taking or possessing of protected
5118 wildlife shall be seized, and upon a finding by the court that they were used in the unlawful
5119 taking or possessing of protected wildlife, the materials and devices shall be subject to criminal
5120 or civil forfeiture under the procedures and substantive protections established in Title 24,
5121 Chapter 1, Utah Uniform Forfeiture Procedures Act.
5122 (4) (a) Conservation officers may seize and impound a vehicle used for the unlawful
5123 taking or possessing of protected wildlife for any of the following purposes:
5124 (i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;
5125 (ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search
5126 warrant; or
5127 (iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or
5128 possessed.
5129 (b) The division shall store any seized vehicle in a public or private garage, state
5130 impound lot, or other secured storage facility.
5131 (5) A seized vehicle shall be released to the owner no later than 30 days after the date
5132 the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of
5133 wildlife by a person who is charged with committing a felony under this title.
5134 (6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful
5135 taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject
5136 to criminal or civil forfeiture under the procedures and substantive protections established in
5137 Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.
5138 (b) The owner of a seized vehicle is liable for the payment of any impound fee if [~~he~~]
5139 the owner used the vehicle for the unlawful taking or possessing of wildlife and is found by a
5140 court to be guilty of a violation of this title.
5141 (c) The owner of a seized vehicle is not liable for the payment of any impound fee or, if
5142 the fees have been paid, is entitled to reimbursement of the fees paid, if:

5143 (i) no charges are filed or all charges are dropped which involve the use of the vehicle
5144 for the unlawful taking or possessing of wildlife;
5145 (ii) the person charged with using the vehicle for the unlawful taking or possessing of
5146 wildlife is found by a court to be not guilty; or
5147 (iii) the owner did not consent to a use of the vehicle which violates this chapter.
5148 Section 120. Section **23-20-9** is amended to read:
5149 **23-20-9. Donating protected wildlife.**
5150 (1) A person may only donate protected wildlife or their parts to another person at:
5151 (a) the residence of the donor;
5152 (b) the residence of the person receiving protected wildlife or their parts;
5153 (c) a meat locker;
5154 (d) a storage plant;
5155 (e) a meat processing facility; or
5156 (f) a location authorized by the Wildlife Board in rule, proclamation, or order.
5157 (2) A written statement of donation [~~must~~] shall be kept with the protected wildlife or
5158 parts showing:
5159 (a) the number and species of protected wildlife or parts donated;
5160 (b) the date of donation;
5161 (c) the license or permit number of the donor; and
5162 (d) the signature of the donor.
5163 (3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big
5164 game animal to another person or organization at any place without a donation slip.
5165 Section 121. Section **23-20-14** is amended to read:
5166 **23-20-14. Definitions -- Posted property -- Hunting by permission -- Entry on**
5167 **private land while hunting or fishing -- Violations -- Penalty -- Prohibitions inapplicable**
5168 **to officers -- Promotion of respect for private property.**
5169 (1) As used in this section:
5170 [~~(b)~~] (a) "Cultivated land" means land which is readily identifiable as:
5171 (i) land whose soil is loosened or broken up for the raising of crops;
5172 (ii) land used for the raising of crops; or
5173 (iii) pasturage which is artificially irrigated.

5174 [~~(a)~~] (b) "Division" means the Division of Wildlife Resources.
5175 (c) "Permission" means written authorization from the owner or person in charge to
5176 enter upon private land that is either cultivated or properly posted, and [~~must~~] shall include:
5177 (i) the signature of the owner or person in charge;
5178 (ii) the name of the person being given permission;
5179 (iii) the appropriate dates; and
5180 (iv) a general description of the property.
5181 (d) "Properly posted" means that "No Trespassing" signs or a minimum of 100 square
5182 inches of bright yellow, bright orange, or fluorescent paint are displayed at all corners, fishing
5183 streams crossing property lines, roads, gates, and rights-of-way entering the land. If metal
5184 fence posts are used, the entire exterior side [~~must~~] shall be painted.
5185 (2) (a) While taking wildlife or engaging in wildlife related activities, a person may
5186 not:
5187 (i) without the permission of the owner or person in charge, enter upon privately
5188 owned land that is cultivated or properly posted;
5189 (ii) refuse to immediately leave the private land if requested to do so by the owner or
5190 person in charge; or
5191 (iii) obstruct any entrance or exit to private property.
5192 (b) "Hunting by permission cards" will be provided to landowners by the division upon
5193 request.
5194 (c) A person may not post:
5195 (i) private property [~~he~~] the person does not own or legally control; or
5196 (ii) land that is open to the public as provided by Section 23-21-4.
5197 (3) (a) A person convicted of violating any provision of Subsection (2) may have [~~his~~]
5198 the person's license, tag, certificate of registration, or permit, relating to the activity engaged in
5199 at the time of the violation, revoked by a hearing officer.
5200 (b) A hearing officer may construe any subsequent conviction which occurs within a
5201 five-year period as a flagrant violation and may prohibit the person from obtaining a new
5202 license, tag, certificate of registration, or permit for a period of up to five years.
5203 (4) Subsection (2)(a) does not apply to peace or conservation officers in the
5204 performance of their duties.

5205 (5) (a) The division shall provide information regarding owners' rights and sportsmen's
5206 duties:
5207 (i) to anyone holding licenses, certificates of registration, tags, or permits to take
5208 wildlife; and
5209 (ii) by using the public media and other sources.
5210 (b) The restrictions in this section relating to trespassing shall be stated in all hunting
5211 and fishing proclamations issued by the Wildlife Board.
5212 (6) Any person who violates any provision of Subsection (2) is guilty of a class B
5213 misdemeanor.
5214 Section 122. Section **23-20-20** is amended to read:
5215 **23-20-20. Children accompanied by adults while hunting with weapon.**
5216 (1) As used in this section:
5217 (a) "Accompanied" means at a distance within which visual and verbal communication
5218 is maintained for the purposes of advising and assisting.
5219 (b) (i) "Electronic device" means a mechanism powered by electricity that allows
5220 communication between two or more people.
5221 (ii) "Electronic device" includes a mobile telephone or two-way radio.
5222 (c) "Verbal communication" means the conveyance of information through speech that
5223 does not involve an electronic device.
5224 (2) A person younger than 14 years old who is hunting with any weapon [~~must~~] shall
5225 be accompanied by:
5226 (a) the person's parent or legal guardian; or
5227 (b) a responsible person who is at least 21 years old and who is approved by the
5228 person's parent or guardian.
5229 (3) A person younger than 16 years old who is hunting big game with any weapon
5230 [~~must~~] shall be accompanied by:
5231 (a) the person's parent or legal guardian; or
5232 (b) a responsible person who is at least 21 years old and who is approved by the
5233 person's parent or guardian.
5234 (4) A person who is at least 14 years old but younger than 16 years old [~~must~~] shall be
5235 accompanied by a person who is at least 21 years old while hunting wildlife, other than big

5236 game, with any weapon.
5237 Section 123. Section **23-20-28** is amended to read:
5238 **23-20-28. Search warrants.**
5239 (1) A search warrant may be issued by a magistrate to search for any property which
5240 may constitute evidence of any violation of the provisions of this code, rules, regulations, or
5241 proclamations of the Wildlife Board upon an affidavit of any person.
5242 (2) The search warrant shall be directed to a conservation officer or a peace officer,
5243 directing [~~him~~] the officer to search for evidence and to bring it before the magistrate.
5244 (3) A search warrant [~~shall not~~] may not be issued except upon probable cause
5245 supported by oath or affirmation, particularly describing the place, person, or thing to be
5246 searched for and the person or thing to be seized.
5247 (4) The warrant shall be served in the daytime, unless there is reason to believe that the
5248 service of the search warrant is required immediately because a person may:
5249 (a) flee the jurisdiction to avoid prosecution or discovery of a violation noted above;
5250 (b) destroy or conceal evidence of the commission of any violation; or
5251 (c) injure another person or damage property.
5252 (5) The search warrant may be served at night if:
5253 (a) there is reason to believe that a violation may occur at night; or
5254 (b) the evidence of the violation may not be available to the officers serving the
5255 warrant during the day.
5256 Section 124. Section **23-20-29** is amended to read:
5257 **23-20-29. Interference with hunting prohibited -- Action to recover damages --**
5258 **Exceptions.**
5259 (1) A person is guilty of a class B misdemeanor who intentionally interferes with the
5260 right of a person licensed and legally hunting under [~~Title 23,~~] Chapter 19, Licenses, Permits,
5261 and Tags to take wildlife by driving, harassing, or intentionally disturbing any species of
5262 wildlife for the purpose of disrupting a legal hunt, trapping, or predator control.
5263 (2) Any directly affected person or the state may bring an action to recover civil
5264 damages resulting from a violation of Subsection (1) or a restraining order to prevent a
5265 potential violation of Subsection (1).
5266 (3) This section does not apply to incidental interference with a hunt caused by lawful

5267 activities including[~~, but not limited to,~~] ranching, mining, and recreation.
5268 Section 125. Section **23-20-30** is amended to read:
5269 **23-20-30. Tagging requirements.**
5270 (1) The Wildlife Board may make rules that require the carcass of certain species of
5271 protected wildlife to be tagged.
5272 (2) The carcass of any species of protected wildlife required to be tagged [~~must~~] shall
5273 be tagged before the carcass is moved from or the hunter leaves the site of kill.
5274 (3) To tag a carcass, a person shall:
5275 (a) completely detach the tag from the license or permit;
5276 (b) completely remove the appropriate notches to correspond with:
5277 (i) the date the animal was taken; and
5278 (ii) the sex of the animal; and
5279 (c) attach the tag to the carcass so that the tag remains securely fastened and visible.
5280 (4) A person may not:
5281 (a) remove more than one notch indicating date or sex; or
5282 (b) tag more than one carcass using the same tag.
5283 Section 126. Section **23-20-31** is amended to read:
5284 **23-20-31. Requirement to wear hunter orange -- Exceptions.**
5285 (1) As used in this section:
5286 (a) (i) "Centerfire rifle hunt" means a hunt for which a hunter may use a centerfire rifle,
5287 except as provided in Subsection (1)(a)(ii).
5288 (ii) "Centerfire rifle hunt" does not include:
5289 (A) a bighorn sheep hunt;
5290 (B) a mountain goat hunt;
5291 (C) a bison hunt;
5292 (D) a moose hunt;
5293 (E) a hunt requiring the hunter to possess a statewide conservation permit; or
5294 (F) a hunt requiring the hunter to possess a statewide sportsman permit.
5295 (b) "Statewide conservation permit" means a permit:
5296 (i) issued by the division;
5297 (ii) distributed through a nonprofit organization founded for the purpose of promoting

5298 wildlife conservation; and
5299 (iii) valid:
5300 (A) on open hunting units statewide; and
5301 (B) for the species of big game and time period designated by the Wildlife Board.
5302 (c) "Statewide sportsman permit" means a permit:
5303 (i) issued by the division through a public draw; and
5304 (ii) valid:
5305 (A) on open hunting units statewide; and
5306 (B) for the species of big game and time period designated by the Wildlife Board.
5307 (2) (a) A person shall wear a minimum of 400 square inches of hunter orange material
5308 while hunting any species of big game, except as provided in Subsection (3).
5309 (b) Hunter orange material [~~must~~] shall be worn on the head, chest, and back.
5310 (3) A person is not required to wear the hunter orange material described in Subsection
5311 (2):
5312 (a) during the following types of hunts, unless a centerfire rifle hunt is in progress in
5313 the same area:
5314 (i) archery;
5315 (ii) muzzle-loader;
5316 (iii) mountain goat;
5317 (iv) bighorn sheep;
5318 (v) bison; or
5319 (vi) moose; or
5320 (b) as provided by a rule of the Wildlife Board.
5321 Section 127. Section **23-21-2** is amended to read:
5322 **23-21-2. Payments in lieu of property taxes on property purchased by division.**
5323 Prior to the purchase of any real property held in private ownership, the Division of
5324 Wildlife Resources shall first submit the proposition to the county legislative body in a regular
5325 open public meeting in the county where the property is located and shall by contractual
5326 agreement with the county legislative body, approved by the executive director of the
5327 Department of Natural Resources, agree to pay an amount of money in lieu of property taxes to
5328 the county. The division shall, by contractual agreement with the county legislative body in

5329 which any property previously acquired from private ownership and now owned by the division
5330 is located, agree to pay annually an amount of money in lieu of wildlife resource fine money,
5331 previously paid to the county. Payments provided for in this section will not exceed what the
5332 regularly assessed real property taxes would be if the land had remained in private ownership;
5333 and these payments [~~shall not~~] may not include any amount for buildings, installations,
5334 fixtures, improvements or personal property located upon the land or for those acquired,
5335 constructed or placed by the division after it acquires the land.
5336 Section 128. Section **23-22-1** is amended to read:
5337 **23-22-1. Cooperative agreements and programs authorized.**
5338 (1) The Division of Wildlife Resources may enter into cooperative agreements and
5339 programs with other state agencies, federal agencies, states, educational institutions,
5340 municipalities, counties, corporations, organized clubs, landowners, associations, and
5341 individuals for purposes of wildlife conservation.
5342 (2) Cooperative agreements that are policy in nature [~~must~~] shall be:
5343 (a) approved by the executive director of the Department of Natural Resources; and
5344 (b) reviewed by the Wildlife Board.
5345 Section 129. Section **23-22-3** is amended to read:
5346 **23-22-3. Reciprocal agreements with other states.**
5347 (1) The Wildlife Board is authorized to enter into reciprocal agreements with other
5348 states to:
5349 (a) license and regulate fishing, hunting, and related activities; and
5350 (b) promote and implement wildlife management programs.
5351 (2) Reciprocal agreements [~~must~~] shall be approved by the executive director of the
5352 Department of Natural Resources.
5353 Section 130. Section **23-23-11** is amended to read:
5354 **23-23-11. Failure to comply with rules and requirements.**
5355 A person [~~must~~] shall leave private property within a cooperative wildlife management
5356 unit immediately, upon request of a landowner, landowner association operator, or cooperative
5357 wildlife management unit agent, if that person:
5358 (1) does not have in [~~his or her~~] that person's possession a cooperative wildlife
5359 management unit authorization or permit;

5360 (2) endangers or has endangered human safety;
5361 (3) damages or has damaged private property within a cooperative wildlife
5362 management unit; or
5363 (4) fails or has failed to comply with reasonable rules of a landowner association.
5364 Section 131. Section **23-24-1** is amended to read:
5365 **23-24-1. Procedure to obtain compensation for livestock damage done by bear,**
5366 **mountain lion, wolf, or eagle.**
5367 (1) As used in this section:
5368 (a) "Damage" means injury to or loss of livestock.
5369 (b) "Division" means the Division of Wildlife Resources.
5370 (c) "Livestock" means cattle, sheep, goats, or turkeys.
5371 (d) (i) "Wolf" means the gray wolf Canis lupus.
5372 (ii) "Wolf" does not mean a wolf hybrid with a domestic dog.
5373 (2) (a) (i) Except as provided by Subsection (2)(a)(ii), if livestock are damaged by a
5374 bear, mountain lion, wolf, or an eagle, the owner may receive compensation for the fair market
5375 value of the damage.
5376 (ii) The owner may not receive compensation if the livestock is damaged by a wolf
5377 within an area where a wolf is endangered or threatened under the Endangered Species Act of
5378 1973, 16 U.S.C. Sec. 1531, et seq.
5379 (b) To obtain this compensation, the owner of the damaged livestock shall notify the
5380 division of the damage as soon as possible, but no later than four days after the damage is
5381 discovered.
5382 (c) The owner [~~must~~] shall notify the division each time any damage is discovered.
5383 (3) The livestock owner shall file a proof of loss form, provided by the division, no
5384 later than 30 days after the original notification of damage was given to the division by the
5385 owner.
5386 (4) (a) (i) The division, with the assistance of the Department of Agriculture and Food
5387 shall:
5388 (A) within 30 days after the owner files the proof of loss form, either accept or deny the
5389 claim for damages; and
5390 (B) subject to Subsections (4)(a)(ii) through (4)(a)(iv), pay all accepted claims to the

5391 extent money appropriated by the Legislature is available for this purpose.
5392 (ii) Money appropriated from the Wildlife Resources Account may be used to provide
5393 compensation for only up to 50% of the fair market value of any damaged livestock.
5394 (iii) Money appropriated from the Wildlife Resources Account may not be used to
5395 provide compensation for livestock damaged by an eagle or a wolf.
5396 (iv) The division may not pay any eagle damage claim until the division has paid all
5397 accepted mountain lion and bear damage claims for the fiscal year.
5398 (b) The division may not pay mountain lion, bear, wolf, or eagle damage claims to a
5399 livestock owner unless the owner has filed a completed livestock form and the appropriate fee
5400 as outlined in Section 4-23-7 for the immediately preceding and current year.
5401 (c) (i) Unless the division denies a claim for the reason identified in Subsection (4)(b),
5402 the owner may appeal the decision to a panel consisting of one person selected by the owner,
5403 one person selected by the division, and a third person selected by the first two panel members.
5404 (ii) The panel shall decide whether the division should pay all of the claim, a portion of
5405 the claim, or none of the claim.
5406 (5) By following the procedures and requirements of Title 63G, Chapter 3, Utah
5407 Administrative Rulemaking Act, the Wildlife Board may make and enforce rules to administer
5408 and enforce this section.
5409 Section 132. Section **24-1-8** is amended to read:
5410 **24-1-8. Criminal procedures.**
5411 (1) In cases where an owner is criminally prosecuted for conduct giving rise to
5412 forfeiture, the prosecuting attorney may elect to forfeit the owner's interest in the property
5413 civilly or criminally, provided that no civil forfeiture judgment may be entered with respect to
5414 the property of a defendant who is acquitted of the offense on which the forfeiture claim is
5415 based.
5416 (2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the
5417 property, the information or indictment [~~must~~] shall state that the owner's interest in the
5418 specifically described property is subject to criminal forfeiture and the basis for the forfeiture.
5419 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining
5420 orders or injunctions, or take other reasonable action to preserve for forfeiture under this
5421 section any forfeitable property if, after notice to persons known, or discoverable after due

5422 diligence, to have an interest in the property and after affording them an opportunity for a
5423 hearing, the court determines that:
5424 (i) there is a substantial probability that the state will prevail on the issue of forfeiture
5425 and that failure to enter the order will result in the property being sold, transferred, destroyed,
5426 or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and
5427 (ii) the need to preserve the availability of the property or prevent its sale, transfer,
5428 destruction, or removal through the entry of the requested order outweighs the hardship against
5429 any party against whom the order is to be entered.
5430 (b) A temporary restraining order may be entered ex parte upon application of the
5431 prosecuting attorney before or after an information or indictment has been filed with respect to
5432 the property, if the prosecuting attorney demonstrates that:
5433 (i) there is probable cause to believe that the property with respect to which the order is
5434 sought would, in the event of a conviction, be subject to forfeiture under this section; and
5435 (ii) provision of notice would jeopardize the availability of the property for forfeiture
5436 or would jeopardize an ongoing criminal investigation.
5437 (c) The temporary order expires not more than 10 days after entry unless extended for
5438 good cause shown or unless the party against whom it is entered consents to an extension. An
5439 adversarial hearing concerning an order entered under this section shall be held as soon as
5440 practicable and prior to the expiration of the temporary order.
5441 (d) The court is not bound by the Utah Rules of Evidence regarding evidence it may
5442 receive and consider at any hearing under this section.
5443 (4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal
5444 forfeiture, the jury shall be instructed and asked to return a special verdict as to the extent of
5445 the property identified in the information or indictment, if any, that is forfeitable.
5446 (b) Whether property is forfeitable shall be proven beyond a reasonable doubt.
5447 (5) (a) Upon conviction of a person for violating any provision of state law subjecting
5448 an owner's property to forfeiture and upon the jury's special verdict that the property is
5449 forfeitable, the court shall enter a judgment and order the property forfeited to the state upon
5450 the terms stated by the court in its order.
5451 (b) Following the entry of an order declaring property forfeited, the court may, upon
5452 application of the prosecuting attorney, enter appropriate restraining orders or injunctions,

5453 require the execution of satisfactory performance bonds, appoint receivers, conservators,
5454 appraisers, accountants, or trustees, or take any other action to protect the interest of the state in
5455 property ordered forfeited.
5456 (6) (a) After property is ordered forfeited under this section, the seizing agency shall
5457 direct the disposition of the property under Section 24-1-17. Any property right or interest not
5458 exercisable by or transferable for value to the state expires and does not revert to the defendant.
5459 The defendant or any person acting in concert with or on behalf of the defendant is not eligible
5460 to purchase forfeited property at any sale held by the seizing agency unless approved by the
5461 judge.
5462 (b) The court may stay the sale or disposition of the property pending the conclusion of
5463 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that
5464 proceeding with the sale or disposition of the property may result in irreparable injury, harm or
5465 loss to [~~him~~] the defendant.
5466 (7) Except under Subsection (3) or (10), a party claiming an interest in property subject
5467 to criminal forfeiture under this section:
5468 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of
5469 property under this section; and
5470 (b) may not commence an action at law or equity against the state or the county
5471 concerning the validity of [~~his~~] the party's alleged interests in the property subsequent to the
5472 filing of an indictment or an information alleging that the property is subject to forfeiture under
5473 this section.
5474 (8) The district court of the state which has jurisdiction of a case under this part may
5475 enter orders under this section without regard to the location of any property which may be
5476 subject to forfeiture under this section, or which has been ordered forfeited under this section.
5477 (9) To facilitate the identification or location of property declared forfeited and to
5478 facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of
5479 an order declaring property forfeited to the state, the court may upon application of the
5480 prosecuting attorney order that the testimony of any witness relating to the property forfeited be
5481 taken by deposition, and that any book, paper, document, record, recording, or other material
5482 not privileged shall be produced as provided for depositions and discovery under the Utah
5483 Rules of Civil Procedure.

5484 (10) (a) Following the entry of an order of forfeiture under this section, the prosecuting
5485 attorney shall publish notice of the order's intent to dispose of the property as the court may
5486 direct. The prosecuting attorney shall also provide direct written notice to any person known to
5487 have an alleged interest in the property subject to the order of forfeiture.
5488 (b) Any person, other than the defendant, asserting a legal interest in property which
5489 has been ordered forfeited to the state under this section may, within 30 days of the final
5490 publication of notice or [~~his~~] the person's receipt of written notice under Subsection (10)(a),
5491 whichever is earlier, petition the court for a hearing to adjudicate the validity of [~~his~~] the
5492 person's alleged interest in the property. Any genuine issue of material fact, including issues of
5493 standing, is triable to a jury upon demand of any party.
5494 (c) The petition shall be in writing and signed by the petitioner under penalty of
5495 perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the
5496 property, the time and circumstances of the petitioner's acquisition of the right, title, or interest
5497 in the property, and any additional facts supporting the petitioner's claim and the relief sought.
5498 (d) The trial or hearing on the petition shall be expedited to the extent practicable. The
5499 court may consolidate a trial or hearing on the petition and any petition filed by any other
5500 person under this section other than the defendant. The court shall permit the parties to
5501 conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.
5502 (e) At the trial or hearing, the petitioner may testify and present evidence and witnesses
5503 on [~~his~~] the petitioner's own behalf and cross-examine witnesses who appear at the hearing.
5504 The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the
5505 claim to the property and cross-examine witnesses who appear. In addition to testimony and
5506 evidence presented at the trial or hearing, the court may consider the relevant portion of the
5507 record of the criminal case which resulted in the order of forfeiture. Any trial or hearing shall
5508 be conducted pursuant to the Utah Rules of Evidence.
5509 (f) The court shall amend the order of forfeiture in accordance with its determination, if
5510 after the trial or hearing, the court or jury determines that the petitioner has established by a
5511 preponderance of the evidence that:
5512 (i) the petitioner has a legal right, title, or interest in the property, and the right, title, or
5513 interest renders the order of forfeiture invalid in whole or in part because the right, title, or
5514 interest was vested in the petitioner rather than the defendant or was superior to any right, title,

5515 or interest of the defendant at the time of the commission of the acts or conduct which gave rise
5516 to the forfeiture of the property under this section; or
5517 (ii) the petitioner acquired the right, title or interest in the property in a bona fide
5518 transaction for value and, at the time of such acquisition, the petitioner did not know that the
5519 property was subject to forfeiture.
5520 (g) Following the court's disposition of all petitions filed under this Subsection (10), or
5521 if no petitions are filed following the expiration of the period provided in Subsection (10)(b)
5522 for the filing of petitions, the state has clear title to property subject to the order of forfeiture
5523 and may warrant good title to any subsequent purchaser or transferee.
5524 Section 133. Section **25-5-2** is amended to read:
5525 **25-5-2. Wills and implied trusts excepted.**
5526 Section 25-5-1 [~~shall not~~] may not be construed to affect the power of a testator in the
5527 disposition of [~~his~~] the testator's real estate by last will and testament; nor to prevent any trust
5528 from arising or being extinguished by implication or operation of law.
5529 Section 134. Section **25-6-9** is amended to read:
5530 **25-6-9. Good faith transfer.**
5531 (1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a
5532 person who took in good faith and for a reasonably equivalent value or against any subsequent
5533 transferee or obligee.
5534 (2) Except as otherwise provided in this section, to the extent a transfer is voidable in
5535 an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for
5536 the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to
5537 satisfy the creditor's claim, whichever is less. The judgment may be entered against:
5538 (a) the first transferee of the asset or the person for whose benefit the transfer was
5539 made; or
5540 (b) any subsequent transferee other than a good faith transferee who took for value or
5541 from any subsequent transferee.
5542 (3) If the judgment under Subsection (2) is based upon the value of the asset
5543 transferred, the judgment [~~must~~] shall be for an amount equal to the value of the asset at the
5544 time of the transfer, subject to an adjustment as equities may require.
5545 (4) Notwithstanding voidability of a transfer or an obligation under this chapter, a

5546 good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the
5547 transfer or obligation, to:
5548 (a) a lien on or a right to retain any interest in the asset transferred;
5549 (b) enforcement of any obligation incurred; or
5550 (c) a reduction in the amount of the liability on the judgment.
5551 (5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the
5552 transfer results from:
5553 (a) termination of a lease upon default by the debtor when the termination is pursuant
5554 to the lease and applicable law; or
5555 (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a,
5556 Uniform Commercial Code - Secured Transactions.
5557 (6) A transfer is not voidable under Subsection 25-6-6(2):
5558 (a) to the extent the insider gave new value to or for the benefit of the debtor after the
5559 transfer was made unless the new value was secured by a valid lien;
5560 (b) if made in the ordinary course of business or financial affairs of the debtor and the
5561 insider; or
5562 (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer
5563 secured present value given for that purpose as well as an antecedent debt of the debtor.
5564 Section 135. Section **26-1-5** is amended to read:
5565 **26-1-5. Rules of department.**
5566 (1) Except in areas regulated by statutory committees created by this title, the
5567 department shall have the power to adopt, amend, or rescind rules necessary to carry out the
5568 provisions of this title.
5569 (2) Rules shall have the force and effect of law and may deal with matters which
5570 materially affect the security of health or the preservation and improvement of public health in
5571 the state, and any matters as to which jurisdiction is conferred upon the department by this title.
5572 (3) Every rule adopted by the department pursuant to this section, or a committee
5573 established under Section 26-1-7 or 26-1-7.5, shall be subject to Title 63G, Chapter 3, Utah
5574 Administrative Rulemaking Act and shall become effective at the time and in the manner
5575 provided in that act.
5576 (4) If, at the next general session of the Legislature following the filing of a rule with

5577 the legislative research director, the Legislature passes a bill disapproving such rule, the rule
5578 shall be null and void.
5579 (5) The department or a committee created under Section 26-1-7 or 26-1-7.5, [~~shall~~
5580 ~~not~~] may not adopt a rule identical to a rule disapproved under Subsection (4) of this section,
5581 before the beginning of the next general session of the Legislature following the general
5582 session at which the rule was disapproved.
5583 Section 136. Section **26-1-7.5** is amended to read:
5584 **26-1-7.5. Health advisory council.**
5585 (1) (a) There is created the Utah Health Advisory Council, comprised of nine persons
5586 appointed by the governor.
5587 (b) The governor shall ensure that:
5588 (i) members of the council:
5589 (A) broadly represent the public interest;
5590 (B) have an interest in or knowledge of public health, environmental health, health
5591 planning, health care financing, or health care delivery systems; and
5592 (C) include health professionals;
5593 (ii) the majority of the membership are nonhealth professionals;
5594 (iii) no more than five persons are from the same political party; and
5595 (iv) geography, sex, and ethnicity balance are considered when selecting the members.
5596 (2) (a) Except as required by Subsection (2)(b), members of the council shall be
5597 appointed to four-year terms.
5598 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
5599 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
5600 council members are staggered so that approximately half of the council is appointed every two
5601 years.
5602 (c) Terms of office for subsequent appointments shall commence on July 1 of the year
5603 in which the appointment occurs.
5604 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
5605 be appointed for the unexpired term.
5606 (b) No person shall be appointed to the council for more than two consecutive terms.
5607 (c) The chair of the council shall be appointed by the governor from the membership of

5608 the council.
5609 (4) The council shall meet at least quarterly or more frequently as determined necessary
5610 by the chair. A quorum for conducting business shall consist of four members of the council.
5611 (5) A member may not receive compensation or benefits for the member's service, but,
5612 at the executive director's discretion, may receive per diem and travel expenses in accordance
5613 with:
5614 (a) Section 63A-3-106;
5615 (b) Section 63A-3-107; and
5616 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
5617 63A-3-107.
5618 (6) The council shall be empowered to advise the department on any subject deemed to
5619 be appropriate by the council except that the council [~~shall not~~] may not become involved in
5620 administrative matters. The council shall also advise the department as requested by the
5621 executive director.
5622 (7) The executive director shall ensure that the council has adequate staff support and
5623 shall provide any available information requested by the council necessary for their
5624 deliberations. The council shall observe confidential requirements placed on the department in
5625 the use of such information.
5626 Section 137. Section **26-1-11** is amended to read:
5627 **26-1-11. Executive director -- Power to amend, modify, or rescind committee**
5628 **rules.**
5629 The executive director pursuant to the requirements of the Administrative Rulemaking
5630 Act may amend, modify, or rescind any rule of any committee created pursuant to Section
5631 26-1-7 if the rule creates a clear present hazard or clear potential hazard to the public health
5632 except that the executive director [~~shall not~~] may not act until after discussion with the
5633 appropriate committee.
5634 Section 138. Section **26-1-25** is amended to read:
5635 **26-1-25. Principal and branch offices of department.**
5636 The principal office of the department shall be in Salt Lake County. The department
5637 may establish branch offices at other places in the state to furnish comprehensive and effective
5638 health programs and to render additional assistance to local health officials. This section [~~shall~~

5639 ~~not~~] does not limit the powers of local health agencies.
5640 Section 139. Section **26-1-32** is amended to read:
5641 **26-1-32. Severability of code provisions.**
5642 If any provision of this code or the application of any such provision to any person or
5643 circumstance is held invalid, the invalidity [~~shall not~~] does not affect other provisions or
5644 applications of this code which can be given effect without the invalid provision or application,
5645 and to this end the provisions of this code are declared to be severable.
5646 Section 140. Section **26-3-8** is amended to read:
5647 **26-3-8. Disclosure of health data -- Discretion of department.**
5648 Any disclosure provided for in Section 26-3-7 shall be made at the discretion of the
5649 department, except that the disclosure provided for in Subsection 26-3-7(4) [~~must~~] shall be
5650 made when the requirements of that paragraph [~~have been~~] are met.
5651 Section 141. Section **26-4-2** is amended to read:
5652 **26-4-2. Definitions.**
5653 As used in this chapter:
5654 (1) "Dead body" is as defined in Section 26-2-2.
5655 (2) "Death by violence" means death that resulted by the decedent's exposure to
5656 physical, mechanical, or chemical forces, and includes death which appears to have been due to
5657 homicide, death which occurred during or in an attempt to commit rape, mayhem, kidnapping,
5658 robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence,
5659 assault with a dangerous weapon, assault with intent to commit any offense punishable by
5660 imprisonment for more than one year, arson punishable by imprisonment for more than one
5661 year, or any attempt to commit any of the foregoing offenses.
5662 (3) "Medical examiner" means the state medical examiner appointed pursuant to
5663 Section 26-4-4 or a deputy appointed by the medical examiner.
5664 (4) "Regional pathologist" means a trained pathologist licensed to practice medicine
5665 and surgery in the state, appointed by the medical examiner pursuant to Subsection 26-4-4(3).
5666 (5) "Sudden death while in apparent good health" means apparently instantaneous
5667 death without obvious natural cause, death during or following an unexplained syncope or
5668 coma, or death during an acute or unexplained rapidly fatal illness.
5669 (6) "Sudden infant death syndrome" means the death of a child who was thought to be

5670 in good health or whose terminal illness appeared to be so mild that the possibility of a fatal
5671 outcome was not anticipated.
5672 (7) "Suicide" means death caused by an intentional and voluntary act of a person who
5673 understands the physical nature of the act and intends by such act to accomplish
5674 self-destruction.
5675 (8) "Unattended death" means the death of a person who has not been seen by a
5676 physician within the scope of the physician's professional capacity within 30 days immediately
5677 prior to the date of death. This definition [~~shall not~~] does not require an investigation, autopsy,
5678 or inquest in any case where death occurred without medical attendance solely because the
5679 deceased was under treatment by prayer or spiritual means alone in accordance with the tenets
5680 and practices of a well-recognized church or religious denomination.
5681 (9) (a) "Unavailable for postmortem investigation" means that a dead body is:
5682 (i) transported out of state;
5683 (ii) buried at sea;
5684 (iii) cremated; or
5685 (iv) otherwise made unavailable to the medical examiner for postmortem investigation
5686 or autopsy.
5687 (b) "Unavailable for postmortem investigation" does not include embalming or burial
5688 of a dead body pursuant to the requirements of law.
5689 (10) "Within the scope of the decedent's employment" means all acts reasonably
5690 necessary or incident to the performance of work, including matters of personal convenience
5691 and comfort not in conflict with specific instructions.
5692 Section 142. Section **26-4-9** is amended to read:
5693 **26-4-9. Custody of dead body and personal effects -- Examination of scene of**
5694 **death -- Preservation of body -- Autopsies.**
5695 (1) Upon notification of a death under Section 26-4-8, the medical examiner shall
5696 assume custody of the deceased body, clothing on the body, biological samples taken, and any
5697 article on or near the body which may aid [~~him~~] the medical examiner in determining the cause
5698 of death except those articles which will assist the investigative agency to proceed without
5699 delay with the investigation. In all cases the scene of the event [~~shall not~~] may not be disturbed
5700 until authorization is given by the senior ranking peace officer from the law enforcement

5701 agency having jurisdiction of the case and conducting the investigation. Where death appears to
5702 have occurred under circumstances listed in Section 26-4-7, the person or persons finding or
5703 having custody of the body, or jurisdiction over the investigation of the death, shall take
5704 reasonable precautions to preserve the body and body fluids so that minimum deterioration
5705 takes place. The body [~~shall not~~] may not be moved without permission of the medical
5706 examiner, district attorney, or county attorney having criminal jurisdiction, or his authorized
5707 deputy except in cases of affront to public decency or circumstances where it is not practical to
5708 leave the body where found, or in such cases where the cause of death is clearly due to natural
5709 causes. The body can under direction of a licensed physician or the medical examiner or his
5710 designated representative be moved to a place specified by a funeral director, the attending
5711 physician, the medical examiner, or his representative.
5712 (2) In the event the body, where referred to the medical examiner, is moved, no
5713 cleansing or embalming of the body shall occur without the permission of the medical
5714 examiner. An intentional or knowing violation of this Subsection (2) is a class B misdemeanor.
5715 (3) When the medical examiner assumes lawful custody of a body under Subsection
5716 26-4-7(3) solely because the death was unattended, an autopsy [~~shall not~~] may not be
5717 performed unless requested by the district attorney, county attorney having criminal
5718 jurisdiction, or law enforcement agency having jurisdiction of the place where the body is
5719 found, or a licensed physician, or a spouse, child, parent or guardian of the deceased, and a
5720 licensed physician. The county attorney or district attorney and law enforcement agency having
5721 jurisdiction shall consult with the medical examiner to determine the need for an autopsy. In
5722 any such case concerning unattended deaths qualifying as exempt from autopsy, a death
5723 certificate may be certified by a licensed physician. In this case the physician may be
5724 established as the medical examiner's designated representative. Requested autopsies [~~shall~~
5725 ~~not~~] may not be performed when the medical examiner or [~~his~~] the medical examiner's
5726 designated representative determines the autopsy to be unnecessary, provided that an autopsy
5727 requested by a district or county attorney or law enforcement agency may only be determined to
5728 be unnecessary if the cause of death can be ascertained without an autopsy being performed.
5729 Section 143. Section **26-4-12** is amended to read:
5730 **26-4-12. Order to exhume body -- Procedure.**
5731 (1) In case of any death described in Section 26-4-7, when a body is buried without an

5732 investigation by the medical examiner as to the cause and manner of death, it shall be the duty
5733 of the medical examiner, upon being advised of the fact, to notify the district attorney or county
5734 attorney having criminal jurisdiction where the body is buried or death occurred. Upon
5735 notification, the district attorney or county attorney having criminal jurisdiction may file an
5736 action in the district court to obtain an order to exhume the body. A district judge may order the
5737 body exhumed upon an ex parte hearing.
5738 (2) (a) A body [~~shall not~~] may not be exhumed until notice of the order has been served
5739 upon the executor or administrator of the deceased's estate, or if no executor or administrator
5740 has been appointed, upon the nearest heir of the deceased, determined as if the deceased had
5741 died intestate. If the nearest heir of the deceased cannot be located within the jurisdiction, then
5742 the next heir in succession within the jurisdiction may be served.
5743 (b) The executor, administrator, or heir shall have 24 hours to notify the issuing court
5744 of any objection to the order prior to the time the body is exhumed. If no heirs can be located
5745 within the jurisdiction within 24 hours, the facts shall be reported to the issuing court which
5746 may order that the body be exhumed forthwith.
5747 (c) Notification to the executor, administrator, or heir shall specifically state the nature
5748 of the action and the fact that any objection [~~must~~] shall be filed with the issuing court within
5749 24 hours of the time of service.
5750 (d) In the event an heir files an objection, the court shall set hearing on the matter at the
5751 earliest possible time and issue an order on the matter immediately at the conclusion of the
5752 hearing. Upon the receipt of notice of objection, the court shall immediately notify the county
5753 attorney who requested the order, so that the interest of the state may be represented at the
5754 hearing.
5755 (e) When there is reason to believe that death occurred in a manner described in
5756 Section 26-4-7, the district attorney or county attorney having criminal jurisdiction may make a
5757 motion that the court, upon ex parte hearing, order the body exhumed forthwith and without
5758 notice. Upon a showing of exigent circumstances the court may order the body exhumed
5759 forthwith and without notice. In any event, upon motion of the district attorney or county
5760 attorney having criminal jurisdiction and upon the personal appearance of the medical
5761 examiner, the court for good cause may order the body exhumed forthwith and without notice.
5762 (3) An order to exhume a body shall be directed to the medical examiner, commanding

5763 [~~him~~] the medical examiner to cause the body to be exhumed, perform the required autopsy,
5764 and properly cause the body to be reburied upon completion of the examination.
5765 (4) The examination shall be completed and the complete autopsy report shall be made
5766 to the district attorney or county attorney having criminal jurisdiction for any action the
5767 attorney considers appropriate. The district attorney or county attorney shall submit the return
5768 of the order to exhume within 10 days in the manner prescribed by the issuing court.
5769 Section 144. Section **26-4-20** is amended to read:
5770 **26-4-20. Officials not liable for authorized acts.**
5771 Except as provided in this chapter, a criminal or civil action [~~shall not~~] may not arise
5772 against the county attorney, district attorney, or his deputies, the medical examiner or his
5773 deputies, or regional pathologists for authorizing or performing autopsies authorized by this
5774 chapter or for any other act authorized by this chapter.
5775 Section 145. Section **26-6-3** is amended to read:
5776 **26-6-3. Authority to investigate and control epidemic infections and**
5777 **communicable disease.**
5778 (1) The department has authority to investigate and control the causes of epidemic
5779 infections and communicable disease, and shall provide for the detection, reporting,
5780 prevention, and control of communicable diseases and epidemic infections or any other health
5781 hazard which may affect the public health.
5782 (2) (a) As part of the requirements of Subsection (1), the department shall distribute to
5783 the public and to health care professionals:
5784 (i) medically accurate information about sexually transmitted diseases that may cause
5785 infertility and sterility if left untreated, including descriptions of:
5786 (A) the probable side effects resulting from an untreated sexually transmitted disease,
5787 including infertility and sterility;
5788 (B) medically accepted treatment for sexually transmitted diseases;
5789 (C) the medical risks commonly associated with the medical treatment of sexually
5790 transmitted diseases; and
5791 (D) suggest screening by a private physician; and
5792 (ii) information about:
5793 (A) public services and agencies available to assist individuals with obtaining

5794 treatment for the sexually transmitted disease;
5795 (B) medical assistance benefits that may be available to the individual with the
5796 sexually transmitted disease; and
5797 (C) abstinence before marriage and fidelity after marriage being the surest prevention
5798 of sexually transmitted disease.
5799 (b) The information required by Subsection (2)(a):
5800 (i) shall be distributed by the department and by local health departments free of
5801 charge;
5802 (ii) shall be relevant to the geographic location in which the information is distributed
5803 by:
5804 (A) listing addresses and telephone numbers for public clinics and agencies providing
5805 services in the geographic area in which the information is distributed; and
5806 (B) providing the information in English as well as other languages that may be
5807 appropriate for the geographic area.
5808 (c) (i) Except as provided in Subsection (2)(c)(ii), the department shall develop written
5809 material that includes the information required by this Subsection (2).
5810 (ii) In addition to the written materials required by Subsection (2)(c)(i), the department
5811 may distribute the information required by this Subsection (2) by any other methods the
5812 department determines is appropriate to educate the public, excluding public schools, including
5813 websites, toll free telephone numbers, and the media.
5814 (iii) If the information required by Subsection (2)(b)(ii)(A) is not included in the
5815 written pamphlet developed by the department, the written material [~~must~~] shall include either
5816 a website, or a 24-hour toll free telephone number that the public may use to obtain that
5817 information.
5818 Section 146. Section **26-6-18** is amended to read:
5819 **26-6-18. Venereal disease -- Consent of minor to treatment.**
5820 (1) A consent to medical care or services by a hospital or public clinic or the
5821 performance of medical care or services by a licensed physician executed by a minor who is or
5822 professes to be afflicted with a sexually transmitted disease, shall have the same legal effect
5823 upon the minor and the same legal obligations with regard to the giving of consent as a consent
5824 given by a person of full legal age and capacity, the infancy of the minor and any contrary

5825 provision of law notwithstanding.
5826 (2) The consent of the minor [~~shall not be~~] is not subject to later disaffirmance by
5827 reason of minority at the time it was given and the consent of no other person or persons shall
5828 be necessary to authorize hospital or clinical care or services to be provided to the minor by a
5829 licensed physician.
5830 (3) The provisions of this section shall apply also to minors who profess to be in need
5831 of hospital or clinical care and services or medical care or services provided by a physician for
5832 suspected sexually transmitted disease, regardless of whether such professed suspicions are
5833 subsequently substantiated on a medical basis.
5834 Section 147. Section **26-6-20** is amended to read:
5835 **26-6-20. Serological testing of pregnant or recently delivered women.**
5836 (1) Every licensed physician and surgeon attending a pregnant or recently delivered
5837 woman for conditions relating to her pregnancy shall take or cause to be taken a sample of
5838 blood of the woman at the time of first examination or within 10 days thereafter. The blood
5839 sample shall be submitted to an approved laboratory for a standard serological test for syphilis.
5840 The provisions of this section [~~shall not~~] do not apply to any female who objects thereto on the
5841 grounds that she is a bona fide member of a specified, well recognized religious organization
5842 whose teachings are contrary to the tests.
5843 (2) Every other person attending a pregnant or recently delivered woman, who is not
5844 permitted by law to take blood samples, shall within 10 days from the time of first attendance
5845 cause a sample of blood to be taken by a licensed physician. The blood sample shall be
5846 submitted to an approved laboratory for a standard serological test for syphilis.
5847 (3) An approved laboratory is a laboratory approved by the department according to its
5848 rules governing the approval of laboratories for the purpose of this title. In submitting the
5849 sample to the laboratory the physician shall designate whether it is a prenatal test or a test
5850 following recent delivery.
5851 (4) For the purpose of this chapter, a "standard serological test" means a test for
5852 syphilis approved by the department and made at an approved laboratory.
5853 (5) The laboratory shall transmit a detailed report of the standard serological test,
5854 showing the result thereof to the physician.
5855 Section 148. Section **26-6b-3** is amended to read:

5856 **26-6b-3. Order of restriction.**
5857 (1) The department having jurisdiction over the location where an individual or a group
5858 of individuals who are subject to restriction are found may:
5859 (a) issue a written order of restriction for the individual or group of individuals
5860 pursuant to Subsection 26-1-30(2) or 26A-1-114(1)(b) upon compliance with the requirements
5861 of this chapter; and
5862 (b) issue a verbal order of restriction for an individual or group of individuals pursuant
5863 to Subsection (2)(c).
5864 (2) (a) A department's determination to issue an order of restriction shall be based upon
5865 the totality of circumstances reported to and known by the department, including:
5866 (i) observation;
5867 (ii) information that the department determines is credible and reliable information;
5868 and
5869 (iii) knowledge of current public health risks based on medically accepted guidelines as
5870 may be established by the Department of Health by administrative rule.
5871 (b) An order of restriction issued by a department [~~must~~] shall:
5872 (i) in the opinion of the public health official, be for the shortest reasonable period of
5873 time necessary to protect the public health;
5874 (ii) use the least intrusive method of restriction that, in the opinion of the department,
5875 is reasonable based on the totality of circumstances known to the health department issuing the
5876 order of restriction;
5877 (iii) be in writing unless the provisions of Subsection (2)(c) apply; and
5878 (iv) contain notice of an individual's rights as required in Section 26-6b-3.3.
5879 (c) (i) A department may issue a verbal order of restriction, without prior notice to the
5880 individual or group of individuals if the delay in imposing a written order of restriction would
5881 significantly jeopardize the department's ability to prevent or limit:
5882 (A) the transmission of a communicable or possibly communicable disease that poses a
5883 threat to public health;
5884 (B) the transmission of an infectious agent or possibly infectious agent that poses a
5885 threat to public health;
5886 (C) the exposure or possible exposure of a chemical or biological agent that poses a

5887 threat to public health; or
5888 (D) the exposure or transmission of a condition that poses a threat to public health.
5889 (ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):
5890 (A) is valid for 24 hours from the time the order of restriction is issued;
5891 (B) may be verbally communicated to the individuals or group of individuals subject to
5892 restriction by a first responder;
5893 (C) may be enforced by the first responder until the department is able to establish and
5894 maintain the place of restriction; and
5895 (D) may only be continued beyond the initial 24 hours if a written order of restriction is
5896 issued pursuant to the provisions of Section 26-6b-3.3.
5897 (3) Pending issuance of a written order of restriction under Section 26-6b-3.3, or
5898 judicial review of an order of restriction by the district court pursuant to Section 26-6b-6, an
5899 individual who is subject to the order of restriction may be required to submit to involuntary
5900 examination, quarantine, isolation, or treatment in [~~his~~] the individual's home, a hospital, or
5901 any other suitable facility under reasonable conditions prescribed by the department.
5902 (4) The department that issued the order of restriction shall take reasonable measures,
5903 including the provision of medical care, as may be necessary to assure proper care related to the
5904 reason for the involuntary examination, treatment, isolation, or quarantine of an individual
5905 ordered to submit to an order of restriction.
5906 Section 149. Section **26-6b-3.1** is amended to read:
5907 **26-6b-3.1. Consent to order of restriction -- Periodic review.**
5908 (1) (a) The department shall either seek judicial review of an order of restriction under
5909 Sections 26-6b-4 through 26-6b-6, or obtain the consent of an individual subject to an order of
5910 restriction.
5911 (b) If the department obtains consent, the consent [~~must~~] shall be in writing and [~~must~~]
5912 shall inform the individual or group of individuals:
5913 (i) of the terms and duration of the order of restriction;
5914 (ii) of the importance of complying with the order of restriction to protect the public's
5915 health;
5916 (iii) that each individual has the right to agree to the order of restriction, or refuse to
5917 agree to the order of restriction and seek a judicial review of the order of restriction;

5918 (iv) that for any individual who consents to the order of restriction:
5919 (A) the order of restriction will not be reviewed by the district court unless the
5920 individual withdraws consent to the order of restriction in accordance with Subsection
5921 (1)(b)(iv)(B); and
5922 (B) the individual [~~must~~] shall notify the department in writing, with at least five
5923 business day's notice, if the individual intends to withdraw consent to the order of restriction;
5924 and
5925 (v) that a breach of a consent agreement prior to the end of the order of restriction may
5926 subject the individual to an involuntary order of restriction under Section 26-6b-3.2.
5927 (2) (a) The department responsible for the care of an individual who has consented to
5928 the order of restriction shall periodically reexamine the reasons upon which the order of
5929 restriction was based. This reexamination [~~must~~] shall occur at least once every six months.
5930 (b) (i) If at any time, the department determines that the conditions justifying the order
5931 of restriction for either a group or an individual no longer exist, the department shall
5932 immediately discharge the individual or group from the order of restriction.
5933 (ii) If the department determines that the conditions justifying the order of restriction
5934 continue to exist, the department shall send to the individual a written notice of:
5935 (A) the department's findings, the expected duration of the order of restriction, and the
5936 reason for the decision; and
5937 (B) the individual's right to a judicial review of the order of restriction by the district
5938 court if requested by the individual.
5939 (iii) Upon request for judicial review by an individual, the department shall:
5940 (A) file a petition in district court within five business days after the individual's
5941 request for a judicial review; and
5942 (B) proceed under Sections 26-6b-4 through 26-6b-6.
5943 Section 150. Section **26-7-1** is amended to read:
5944 **26-7-1. Identification of major risk factors by department -- Education of public**
5945 **-- Establishment of programs.**
5946 The department shall identify the major risk factors contributing to injury, sickness,
5947 death, and disability within the state and where it determines that a need exists, educate the
5948 public regarding these risk factors, and the department may establish programs to reduce or

5949 eliminate these factors except that such programs [~~shall not~~] may not be established if adequate
5950 programs exist in the private sector.
5951 Section 151. Section **26-8a-103** is amended to read:
5952 **26-8a-103. State Emergency Medical Services Committee -- Membership --**
5953 **Report -- Expenses.**
5954 (1) The State Emergency Medical Services Committee created by Section 26-1-7 shall
5955 be composed of the following 16 members appointed by the governor, at least five of whom
5956 [~~must~~] shall reside in a county of the third, fourth, fifth, or sixth class:
5957 (a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or
5958 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as follows:
5959 (i) one surgeon who actively provides trauma care at a hospital;
5960 (ii) one rural physician involved in emergency medical care;
5961 (iii) two physicians who practice in the emergency department of a general acute
5962 hospital; and
5963 (iv) one pediatrician who practices in the emergency department or critical care unit of
5964 a general acute hospital or a children's specialty hospital;
5965 (b) one representative from a private ambulance provider;
5966 (c) one representative from an ambulance provider that is neither privately owned nor
5967 operated by a fire department;
5968 (d) two chief officers from fire agencies operated by the following classes of licensed
5969 or designated emergency medical services providers: municipality, county, and fire district,
5970 provided that no class of medical services providers may have more than one representative
5971 under this Subsection (1)(d);
5972 (e) one director of a law enforcement agency that provides emergency medical
5973 services;
5974 (f) one hospital administrator;
5975 (g) one emergency care nurse;
5976 (h) one paramedic in active field practice;
5977 (i) one emergency medical technician in active field practice;
5978 (j) one certified emergency medical dispatcher affiliated with an emergency medical
5979 dispatch center; and

5980 (k) one consumer.
5981 (2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a
5982 four-year term beginning July 1.
5983 (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment
5984 or reappointment, adjust the length of terms to ensure that the terms of committee members are
5985 staggered so that approximately half of the committee is appointed every two years.
5986 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
5987 appointed by the governor for the unexpired term.
5988 (3) (a) Each January, the committee shall organize and select one of its members as
5989 chair and one member as vice chair. The committee may organize standing or ad hoc
5990 subcommittees, which shall operate in accordance with guidelines established by the
5991 committee.
5992 (b) The chair shall convene a minimum of four meetings per year. The chair may call
5993 special meetings. The chair shall call a meeting upon request of five or more members of the
5994 committee.
5995 (c) Nine members of the committee constitute a quorum for the transaction of business
5996 and the action of a majority of the members present is the action of the committee.
5997 (4) The committee shall submit a report in a form acceptable to the committee each
5998 November at the Law Enforcement and Criminal Justice Interim Committee meeting
5999 concerning its:
6000 (a) funding priorities and recommended sources;
6001 (b) closest responder recommendations;
6002 (c) centralized dispatch;
6003 (d) duplication of services and any taxing consequences;
6004 (e) appropriate providers for emergency medical services; and
6005 (f) recommendations and suggested legislation.
6006 (5) A member may not receive compensation or benefits for the member's service, but
6007 may receive per diem and travel expenses in accordance with:
6008 (a) Section 63A-3-106;
6009 (b) Section 63A-3-107; and
6010 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

6011 63A-3-107.
6012 (6) Administrative services for the committee shall be provided by the department.
6013 Section 152. Section **26-8a-203** is amended to read:
6014 **26-8a-203. Data collection.**
6015 (1) The committee shall specify the information that [~~must~~] shall be collected for the
6016 emergency medical services data system established pursuant to Subsection (2).
6017 (2) The department shall establish an emergency medical services data system which
6018 shall provide for the collection of information, as defined by the committee, relating to the
6019 treatment and care of patients who use or have used the emergency medical services system.
6020 (3) Persons providing emergency medical services shall provide information to the
6021 department for the emergency medical services data system established pursuant to Subsection
6022 (2).
6023 Section 153. Section **26-8a-207** is amended to read:
6024 **26-8a-207. Emergency medical services grant program.**
6025 (1) (a) The department shall receive as dedicated credits the amount established in
6026 Section 51-9-403. That amount shall be transferred to the department by the Division of
6027 Finance from funds generated by the surcharge imposed under Title 51, Chapter 9, Part 4,
6028 Criminal Conviction Surcharge Allocation.
6029 (b) Funds transferred to the department under this section shall be used for
6030 improvement of delivery of emergency medical services and administrative costs as described
6031 in Subsection (2)(a). Appropriations to the department for the purposes enumerated in this
6032 section shall be made from those dedicated credits.
6033 (c) All funding for the program created by this section shall be nonlapsing.
6034 (2) (a) The department may use the funds transferred to it under Subsection (1):
6035 (i) to provide staff support; and
6036 (ii) for other expenses incurred in:
6037 (A) administration of grant funds; and
6038 (B) other department administrative costs under this chapter.
6039 (b) After funding staff support, administrative expenses, and trauma system
6040 development, the department and the committee shall make emergency medical services grants
6041 from the remaining funds received as dedicated credits under Subsection (1). A recipient of a

6042 grant under this Subsection (2)(b) [~~must~~] shall actively provide emergency medical services
6043 within the state.
6044 (c) The department shall distribute not less than 25% of the funds, with the percentage
6045 being authorized by a majority vote of the committee, as per capita block grants for use
6046 specifically related to the provision of emergency medical services to nonprofit prehospital
6047 emergency medical services providers that are either licensed or designated and to emergency
6048 medical services that are the primary emergency medical services for a service area. The
6049 department shall determine the grant amounts by prorating available funds on a per capita basis
6050 by county as described in department rule.
6051 (d) The committee shall award the remaining funds as competitive grants for use
6052 specifically related to the provision of emergency medical services based upon rules
6053 established by the committee.
6054 Section 154. Section **26-8a-253** is amended to read:
6055 **26-8a-253. Statewide trauma registry and quality assurance program.**
6056 (1) The department shall:
6057 (a) establish and fund a statewide trauma registry to collect and analyze information on
6058 the incidence, severity, causes, and outcomes of trauma;
6059 (b) establish, by rule, the data elements, the medical care providers that [~~must~~] shall
6060 report, and the time frame and format for reporting;
6061 (c) use the data collected to:
6062 (i) improve the availability and delivery of prehospital and hospital trauma care;
6063 (ii) assess trauma care delivery, patient care outcomes, and compliance with the
6064 requirements of this chapter and applicable department rules; and
6065 (iii) regularly produce and disseminate reports to data providers, state government, and
6066 the public; and
6067 (d) support data collection and abstraction by providing:
6068 (i) a data collection system and technical assistance to each hospital that submits data;
6069 and
6070 (ii) funding or, at the discretion of the department, personnel for collection and
6071 abstraction for each hospital not designated as a trauma center under the standards established
6072 pursuant to Section 26-8a-254.

6073 (2) (a) Each hospital shall submit trauma data in accordance with rules established
6074 under Subsection (1).
6075 (b) A hospital designated as a trauma center shall submit data as part of the ongoing
6076 quality assurance program established in Section 26-8a-252.
6077 (3) The department shall assess:
6078 (a) the effectiveness of the data collected pursuant to Subsection (1); and
6079 (b) the impact of the statewide trauma system on the provision of trauma care.
6080 (4) Data collected under this section shall be subject to [~~Title 26,~~] Chapter 3, Health
6081 Statistics.
6082 (5) No person may be held civilly liable for having provided data to the department in
6083 accordance with this section.
6084 Section 155. Section **26-8a-405.2** is amended to read:
6085 **26-8a-405.2. Selection of provider -- Request for competitive sealed proposal --**
6086 **Public convenience and necessity.**
6087 (1) (a) A political subdivision may contract with an applicant approved under Section
6088 26-8a-404 to provide services for the geographic service area that is approved by the
6089 department in accordance with Subsection (2), if:
6090 (i) the political subdivision complies with the provisions of this section and Section
6091 26-8a-405.3 if the contract is for 911 ambulance or paramedic services; or
6092 (ii) the political subdivision complies with Sections 26-8a-405.3 and 26-8a-405.4, if
6093 the contract is for non-911 services.
6094 (b) (i) The provisions of this section and Sections 26-8a-405.1, 26-8a-405.3, and
6095 26-8a-405.4 do not require a political subdivision to issue a request for proposal for ambulance
6096 or paramedic services or non-911 services.
6097 (ii) If a political subdivision does not contract with an applicant in accordance with this
6098 section and Section 26-8a-405.3, the provisions of Sections 26-8a-406 through 26-8a-409 apply
6099 to the issuance of a license for ambulance or paramedic services in the geographic service area
6100 that is within the boundaries of the political subdivision.
6101 (iii) If a political subdivision does not contract with an applicant in accordance with
6102 this section, Section 26-8a-405.3 and Section 26-8a-405.4, a license for the non-911 services in
6103 the geographic service area that is within the boundaries of the political subdivision may be

6104 issued:
6105 (A) under the public convenience and necessity provisions of Sections 26-8a-406
6106 through 26-8a-409; or
6107 (B) by a request for proposal issued by the department under Section 26-8a-405.5.
6108 (c) (i) For purposes of this Subsection (1)(c):
6109 (A) "Fire district" means a local district under Title 17B, Limited Purpose Local
6110 Government Entities - Local Districts, that:
6111 (I) is located in a county of the first or second class; and
6112 (II) provides fire protection, paramedic, and emergency services.
6113 (B) "Participating municipality" means a city or town whose area is partly or entirely
6114 included within a county service area or fire district.
6115 (C) "Participating county" means a county whose unincorporated area is partly or
6116 entirely included within a fire district.
6117 (ii) A participating municipality or participating county may as provided in this section
6118 and Section 26-8a-405.3, contract with a provider for 911 ambulance or paramedic service.
6119 (iii) If the participating municipality or participating county contracts with a provider
6120 for services under this section and Section 26-8a-405.3:
6121 (A) the fire district is not obligated to provide the services that are included in the
6122 contract between the participating municipality or the participating county and the provider;
6123 (B) the fire district may impose taxes and obligations within the fire district in the same
6124 manner as if the participating municipality or participating county were receiving all services
6125 offered by the fire district; and
6126 (C) the participating municipality's and participating county's obligations to the fire
6127 district are not diminished.
6128 (2) (a) The political subdivision shall submit the request for proposal and the exclusive
6129 geographic service area to be included in a request for proposal issued under Subsections
6130 (1)(a)(i) or (ii) to the department for approval prior to issuing the request for proposal. The
6131 department shall approve the request for proposal and the exclusive geographic service area:
6132 (i) unless the geographic service area creates an orphaned area; and
6133 (ii) in accordance with Subsections (2)(b) and (c).
6134 (b) The exclusive geographic service area may:

6135 (i) include the entire geographic service area that is within the political subdivision's
6136 boundaries;
6137 (ii) include islands within or adjacent to other peripheral areas not included in the
6138 political subdivision that governs the geographic service area; or
6139 (iii) exclude portions of the geographic service area within the political subdivision's
6140 boundaries if another political subdivision or licensed provider agrees to include the excluded
6141 area within their license.
6142 (c) The proposed geographic service area for 911 ambulance or paramedic service
6143 [~~must~~] shall demonstrate that non-911 ambulance or paramedic service will be provided in the
6144 geographic service area, either by the current provider, the applicant, or some other method
6145 acceptable to the department. The department may consider the effect of the proposed
6146 geographic service area on the costs to the non-911 provider and that provider's ability to
6147 provide only non-911 services in the proposed area.
6148 Section 156. Section **26-8a-405.3** is amended to read:
6149 **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**
6150 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under
6151 Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited
6152 through a request for proposal and the provisions of this section.
6153 (b) The governing body of the political subdivision shall approve the request for
6154 proposal prior to the notice of the request for proposals under Subsection (1)(c).
6155 (c) (i) Notice of the request for proposals shall be published:
6156 (A) at least once a week for three consecutive weeks in a newspaper of general
6157 circulation published in the county; or
6158 (B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days
6159 in at least five public places in the county; and
6160 (ii) in accordance with Section 45-1-101 for at least 20 days.
6161 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
6162 offerors during the process of negotiations.
6163 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
6164 political subdivision [~~must~~] shall hold a presubmission conference with interested applicants
6165 for the purpose of assuring full understanding of, and responsiveness to, solicitation

6166 requirements.
6167 (ii) A political subdivision shall allow at least 90 days from the presubmission
6168 conference for the proposers to submit proposals.
6169 (c) Subsequent to the presubmission conference, the political subdivision may issue
6170 addenda to the request for proposals. An addenda to a request for proposal [~~must~~] shall be
6171 finalized and posted by the political subdivision at least 45 days [~~prior to the date~~] before the
6172 day on which the proposal must be submitted.
6173 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
6174 respect to any opportunity for discussion and revisions of proposals, and revisions may be
6175 permitted after submission and before a contract is awarded for the purpose of obtaining best
6176 and final offers.
6177 (e) In conducting discussions, there shall be no disclosures of any information derived
6178 from proposals submitted by competing offerors.
6179 (3) (a) (i) A political subdivision may select an applicant approved by the department
6180 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the
6181 most responsible offeror as defined in Subsection 63G-6-103(24).
6182 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
6183 proposal is determined in writing to be the most advantageous to the political subdivision,
6184 taking into consideration price and the evaluation factors set forth in the request for proposal.
6185 (b) The applicants who are approved under Section 26-8a-405 and who are selected
6186 under this section may be the political subdivision issuing the request for competitive sealed
6187 proposals, or any other public entity or entities, any private person or entity, or any
6188 combination thereof.
6189 (c) A political subdivision may reject all of the competitive proposals.
6190 (4) In seeking competitive sealed proposals and awarding contracts under this section,
6191 a political subdivision:
6192 (a) shall apply the public convenience and necessity factors listed in Subsections
6193 26-8a-408(2) through (6);
6194 (b) shall require the applicant responding to the proposal to disclose how the applicant
6195 will meet performance standards in the request for proposal;
6196 (c) may not require or restrict an applicant to a certain method of meeting the

6197 performance standards, including:
6198 (i) requiring ambulance medical personnel to also be a firefighter; or
6199 (ii) mandating that offerors use fire stations or dispatch services of the political
6200 subdivision;
6201 (d) shall require an applicant to submit the proposal:
6202 (i) based on full cost accounting in accordance with generally accepted accounting
6203 principals; and
6204 (ii) if the applicant is a governmental entity, in addition to the requirements of
6205 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
6206 in compliance with the State of Utah Legal Compliance Audit Guide; and
6207 (e) shall set forth in the request for proposal:
6208 (i) the method for determining full cost accounting in accordance with generally
6209 accepted accounting principles, and require an applicant to submit the proposal based on such
6210 full cost accounting principles;
6211 (ii) guidelines established to further competition and provider accountability; and
6212 (iii) a list of the factors that will be considered by the political subdivision in the award
6213 of the contract, including by percentage, the relative weight of the factors established under this
6214 Subsection (4)(e), which may include such things as:
6215 (A) response times;
6216 (B) staging locations;
6217 (C) experience;
6218 (D) quality of care; and
6219 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
6220 (5) (a) Notwithstanding the provisions of Subsection 63G-6-104(3), the provisions of
6221 Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies, apply to the procurement
6222 process required by this section, except as provided in Subsection (5)(c).
6223 (b) The Procurement Appeals Board created in Section 63G-6-807 shall have
6224 jurisdiction to review and determine an appeal of an offeror under this section in the same
6225 manner as provided in Section 63G-6-810.
6226 (c) (i) An offeror may appeal the solicitation or award as provided by the political
6227 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror

6228 may appeal under the provisions of Subsections (5)(a) and (b).
6229 (ii) The factual determination required by Subsection 63G-6-813(1) shall be based on
6230 whether the solicitation or award was made in accordance with the procedures set forth in this
6231 section and Section 26-8a-405.2.
6232 (d) The determination of an issue of fact by the appeals board shall be final and
6233 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section
6234 63G-6-813.
6235 Section 157. Section **26-8a-405.5** is amended to read:
6236 **26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.**
6237 (1) (a) The department shall issue a request for proposal for non-911 services in a
6238 geographic service area if the department receives a request from a political subdivision under
6239 Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.
6240 (b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be
6241 solicited through a request for proposal and the provisions of this section.
6242 (c) (i) Notice of the request for proposals shall be published:
6243 (A) at least once a week for three consecutive weeks in a newspaper of general
6244 circulation published in the county; or
6245 (B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days
6246 in at least five public places in the county; and
6247 (ii) in accordance with Section 45-1-101 for at least 20 days.
6248 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
6249 offerors during the process of negotiations.
6250 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
6251 department [~~must~~] shall hold a presubmission conference with interested applicants for the
6252 purpose of assuring full understanding of, and responsiveness to, solicitation requirements.
6253 (ii) The department shall allow at least 90 days from the presubmission conference for
6254 the proposers to submit proposals.
6255 (c) Subsequent to the presubmission conference, the department may issue addenda to
6256 the request for proposals. An addenda to a request for proposal [~~must~~] shall be finalized and
6257 posted by the department at least 45 days [~~prior to the date~~] before the day on which the
6258 proposal must be submitted.

6259 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
6260 respect to any opportunity for discussion and revisions of proposals, and revisions may be
6261 permitted after submission and before a contract is awarded for the purpose of obtaining best
6262 and final offers.
6263 (e) In conducting discussions, there shall be no disclosures of any information derived
6264 from proposals submitted by competing offerors.
6265 (3) (a) (i) The department may select an applicant approved by the department under
6266 Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as
6267 defined in Subsection 63G-6-103(24).
6268 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
6269 proposal is determined in writing to be the most advantageous to the public, taking into
6270 consideration price and the evaluation factors set forth in the request for proposal.
6271 (b) The applicants who are approved under Section 26-8a-405 and who are selected
6272 under this section may be the political subdivision responding to the request for competitive
6273 sealed proposals, or any other public entity or entities, any private person or entity, or any
6274 combination thereof.
6275 (c) The department may reject all of the competitive proposals.
6276 (4) In seeking competitive sealed proposals and awarding contracts under this section,
6277 the department:
6278 (a) shall consider the public convenience and necessity factors listed in Subsections
6279 26-8a-408(2) through (6);
6280 (b) shall require the applicant responding to the proposal to disclose how the applicant
6281 will meet performance standards in the request for proposal;
6282 (c) may not require or restrict an applicant to a certain method of meeting the
6283 performance standards, including:
6284 (i) requiring ambulance medical personnel to also be a firefighter; or
6285 (ii) mandating that offerors use fire stations or dispatch services of the political
6286 subdivision;
6287 (d) shall require an applicant to submit the proposal:
6288 (i) based on full cost accounting in accordance with generally accepted accounting
6289 principals; and

6290 (ii) if the applicant is a governmental entity, in addition to the requirements of
6291 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
6292 in compliance with the State of Utah Legal Compliance Audit Guide; and
6293 (e) shall set forth in the request for proposal:
6294 (i) the method for determining full cost accounting in accordance with generally
6295 accepted accounting principles, and require an applicant to submit the proposal based on such
6296 full cost accounting principles;
6297 (ii) guidelines established to further competition and provider accountability; and
6298 (iii) a list of the factors that will be considered by the department in the award of the
6299 contract, including by percentage, the relative weight of the factors established under this
6300 Subsection (4)(e), which may include such things as:
6301 (A) response times;
6302 (B) staging locations;
6303 (C) experience;
6304 (D) quality of care; and
6305 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
6306 (5) A license issued under this section:
6307 (a) is for the exclusive geographic service area approved by the department;
6308 (b) is valid for four years;
6309 (c) is not subject to a request for license from another applicant under the provisions of
6310 Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license
6311 is revoked under Section 26-8a-504;
6312 (d) is subject to supervision by the department under Sections 26-8a-503 and
6313 26-8a-504; and
6314 (e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections
6315 26-8a-406 through 26-8a-409.
6316 Section 158. Section **26-8a-406** is amended to read:
6317 **26-8a-406. Ground ambulance and paramedic licenses -- Parties.**
6318 (1) When an applicant approved under Section 26-8a-404 seeks licensure under the
6319 provisions of Sections 26-8a-406 through 26-8a-409, the department shall:
6320 (a) issue a notice of agency action to the applicant to commence an informal

6321 administrative proceeding;
6322 (b) provide notice of the application to all interested parties; and
6323 (c) publish notice of the application, at the applicant's expense:
6324 (i) once a week for four consecutive weeks, in a newspaper of general circulation in the
6325 geographic service area that is the subject of the application; and
6326 (ii) in accordance with Section 45-1-101 for four weeks.
6327 (2) An interested party has 30 days to object to an application.
6328 (3) If an interested party objects, the presiding officer [~~must~~] shall join the interested
6329 party as an indispensable party to the proceeding.
6330 (4) The department may join the proceeding as a party to represent the public interest.
6331 (5) Others who may be affected by the grant of a license to the applicant may join the
6332 proceeding, if the presiding officer determines that they meet the requirement of legal standing.
6333 Section 159. Section **26-8a-408** is amended to read:
6334 **26-8a-408. Criteria for determining public convenience and necessity.**
6335 (1) The criteria for determining public convenience and necessity is set forth in
6336 Subsections (2) through (6).
6337 (2) Access to emergency medical services [~~must~~] shall be maintained or improved.
6338 The officer shall consider the impact on existing services, including the impact on response
6339 times, call volumes, populations and exclusive geographic service areas served, and the ability
6340 of surrounding licensed providers to service their exclusive geographic service areas. The
6341 issuance or amendment of a license may not create an orphaned area.
6342 (3) The quality of service in the area [~~must~~] shall be maintained or improved. The
6343 officer shall consider the:
6344 (a) staffing and equipment standards of the current licensed provider and the applicant;
6345 (b) training and certification levels of the current licensed provider's staff and the
6346 applicant's staff;
6347 (c) continuing medical education provided by the current licensed provider and the
6348 applicant;
6349 (d) levels of care as defined by department rule;
6350 (e) plan of medical control; and
6351 (f) the negative or beneficial impact on the regional emergency medical service system

6352 to provide service to the public.
6353 (4) The cost to the public [~~must~~] shall be justified. The officer [~~must~~] shall consider:
6354 (a) the financial solvency of the applicant;
6355 (b) the applicant's ability to provide services within the rates established under Section
6356 26-8a-403;
6357 (c) the applicant's ability to comply with cost reporting requirements;
6358 (d) the cost efficiency of the applicant; and
6359 (e) the cost effect of the application on the public, interested parties, and the emergency
6360 medical services system.
6361 (5) Local desires concerning cost, quality, and access [~~must~~] shall be considered. The
6362 officer shall assess and consider:
6363 (a) the existing provider's record of providing services and the applicant's record and
6364 ability to provide similar or improved services;
6365 (b) locally established emergency medical services goals, including those established in
6366 Subsection (7);
6367 (c) comment by local governments on the applicant's business and operations plans;
6368 (d) comment by interested parties that are providers on the impact of the application on
6369 the parties' ability to provide emergency medical services;
6370 (e) comment by interested parties that are local governments on the impact of the
6371 application on the citizens it represents; and
6372 (f) public comment on any aspect of the application or proposed license.
6373 (6) Other related criteria:
6374 (a) the officer considers necessary; or
6375 (b) established by department rule.
6376 (7) The role of local governments in the licensing of ground ambulance and paramedic
6377 providers that serve areas also served by the local governments is important. The Legislature
6378 strongly encourages local governments to establish cost, quality, and access goals for the
6379 ground ambulance and paramedic services that serve their areas.
6380 (8) In a formal adjudicative proceeding, the applicant bears the burden of establishing
6381 that public convenience and necessity require the approval of the application for all or part of
6382 the exclusive geographic service area requested.

6383 Section 160. Section **26-8a-410** is amended to read:
6384 **26-8a-410. Local approvals.**
6385 (1) Licensed ambulance providers and paramedic providers [~~must~~] shall meet all local
6386 zoning and business licensing standards generally applicable to businesses operating within the
6387 jurisdiction.
6388 (2) Publicly subsidized providers [~~must~~] shall demonstrate approval of the taxing
6389 authority that will provide the subsidy.
6390 (3) A publicly operated service [~~must~~] shall demonstrate that the governing body has
6391 approved the provision of services to the entire exclusive geographic service area that is the
6392 subject of the license, including those areas that may lie outside the territorial or jurisdictional
6393 boundaries of the governing body.
6394 Section 161. Section **26-8a-413** is amended to read:
6395 **26-8a-413. License renewals.**
6396 (1) A licensed provider desiring to renew its license [~~must~~] shall meet the renewal
6397 requirements established by department rule.
6398 (2) The department shall issue a renewal license for a ground ambulance provider or a
6399 paramedic provider upon the licensee's application for a renewal and without a public hearing
6400 if there has been:
6401 (a) no change in controlling interest in the ownership of the licensee as defined in
6402 Section 26-8a-415;
6403 (b) no serious, substantiated public complaints filed with the department against the
6404 licensee during the term of the previous license;
6405 (c) no material or substantial change in the basis upon which the license was originally
6406 granted;
6407 (d) no reasoned objection from the committee or the department; and
6408 (e) if the applicant was licensed under the provisions of Sections 26-8a-406 through
6409 26-8a-409, no conflicting license application.
6410 (3) (a) (i) The provisions of this Subsection (3) apply to a provider licensed under the
6411 provisions of Sections 26-8a-405.1 and 26-8a-405.2.
6412 (ii) A provider may renew its license if the provisions of Subsections (1), (2)(a)
6413 through (d), and this Subsection (3) are met.

6414 (b) (i) The department shall issue a renewal license to a provider upon the provider's
6415 application for renewal for one additional four-year term if the political subdivision certifies to
6416 the department that the provider has met all of the specifications of the original bid.
6417 (ii) If the political subdivision does not certify to the department that the provider has
6418 met all of the specifications of the original bid, the department may not issue a renewal license
6419 and the political subdivision [~~must~~] shall enter into a public bid process under Sections
6420 26-8a-405.1 and 26-8a-405.2.
6421 (c) (i) The department shall issue an additional renewal license to a provider who has
6422 already been issued a one-time renewal license under the provisions of Subsection (3)(b)(i) if
6423 the department and the political subdivision do not receive, prior to the expiration of the
6424 provider's license, written notice from an approved applicant informing the political
6425 subdivision of the approved applicant's desire to submit a bid for ambulance or paramedic
6426 service.
6427 (ii) If the department and the political subdivision receive the notice in accordance with
6428 Subsection (3)(c)(i), the department may not issue a renewal license and the political
6429 subdivision [~~must~~] shall enter into a public bid process under Sections 26-8a-405.1 and
6430 26-8a-405.2.
6431 (4) The department shall issue a renewal license for an air ambulance provider upon
6432 the licensee's application for renewal and completion of the renewal requirements established
6433 by department rule.
6434 Section 162. Section **26-10b-102** is amended to read:
6435 **26-10b-102. Department to award grants and contracts -- Applications.**
6436 (1) (a) Within appropriations specified by the Legislature for this purpose, the
6437 department may make grants to public and nonprofit entities for the cost of operation of
6438 providing primary health care services to medically underserved populations.
6439 (b) The department may, as funding permits, contract with community based
6440 organizations for the purpose of developing culturally and linguistically appropriate programs
6441 and services for low income and medically underserved populations through a pilot program to
6442 accomplish one or more of the following:
6443 (i) to educate individuals:
6444 (A) to use private and public health care coverage programs, products, services, and

6445 resources in a timely, effective, and responsible manner;
6446 (B) to make prudent use of private and public health care resources;
6447 (C) to pursue preventive health care, health screenings, and disease management; and
6448 (D) to locate health care programs and services;
6449 (ii) to assist individuals to develop:
6450 (A) personal health management;
6451 (B) self-sufficiency in daily care; and
6452 (C) life and disease management skills;
6453 (iii) to support translation of health materials and information;
6454 (iv) to facilitate an individual's access to primary care services and providers, including
6455 mental health services; and
6456 (v) to measure and report empirical results of the pilot project.
6457 (2) (a) Grants by the department shall be awarded based on:
6458 (i) applications submitted to the department in the manner and form prescribed by the
6459 department; and
6460 (ii) the criteria established in Section 26-10b-103.
6461 (b) The application for a grant under Subsection (2)(a) shall contain:
6462 (i) a requested award amount;
6463 (ii) a budget; and
6464 (iii) a narrative plan of the manner in which the applicant intends to provide the
6465 primary health care services described in Subsection 26-10b-101(7).
6466 (c) A contract bid for a service under Subsection (1)(b):
6467 (i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;
6468 (ii) [~~must~~] shall include the information described in Section 26-10b-103; and
6469 (iii) is subject to Subsection (3) of this section.
6470 (3) (a) An applicant under this chapter [~~must~~] shall demonstrate to the department that
6471 the applicant will not deny services to a person because of the person's inability to pay for the
6472 services.
6473 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
6474 person receiving services, a third party, or a government agency if:
6475 (i) the applicant is authorized to charge for the services; and

6476 (ii) the person, third party, or government agency is under legal obligation to pay the
6477 charges.
6478 (4) The department shall maximize the use of federal matching funds received for
6479 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).
6480 Section 163. Section **26-15-8** is amended to read:
6481 **26-15-8. Periodic evaluation of local health sanitation programs -- Minimum**
6482 **statewide enforcement standards -- Technical assistance.**
6483 (1) The department shall periodically evaluate the sanitation programs of local health
6484 departments to determine the levels of sanitation being maintained throughout the state.
6485 (2) (a) The department shall ensure that each local health department's enforcement of
6486 the minimum rules of sanitation adopted under Section 26-15-2 for restaurants and other places
6487 where food or drink is handled meets or exceeds minimum statewide enforcement standards
6488 established by the department by administrative rule.
6489 (b) Administrative rules adopted under Subsection (2)(a) shall include at least:
6490 (i) the minimum number of periodic on-site inspections that [~~must~~] shall be conducted
6491 by each local health department;
6492 (ii) criteria for conducting additional inspections; and
6493 (iii) standardized methods to be used by local health departments to assess compliance
6494 with the minimum rules of sanitation adopted under Section 26-15-2.
6495 (c) The department shall help local health departments comply with the minimum
6496 statewide enforcement standards adopted under this Subsection (2) by providing technical
6497 assistance.
6498 Section 164. Section **26-18-3** is amended to read:
6499 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
6500 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
6501 **standards -- Internal audits -- Studies -- Health opportunity accounts.**
6502 (1) The department shall be the single state agency responsible for the administration
6503 of the Medicaid program in connection with the United States Department of Health and
6504 Human Services pursuant to Title XIX of the Social Security Act.
6505 (2) (a) The department shall implement the Medicaid program through administrative
6506 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking

6507 Act, the requirements of Title XIX, and applicable federal regulations.
6508 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
6509 necessary to implement the program:
6510 (i) the standards used by the department for determining eligibility for Medicaid
6511 services;
6512 (ii) the services and benefits to be covered by the Medicaid program; and
6513 (iii) reimbursement methodologies for providers under the Medicaid program.
6514 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health
6515 and Human Services Appropriations Subcommittee when the department:
6516 (i) implements a change in the Medicaid State Plan;
6517 (ii) initiates a new Medicaid waiver;
6518 (iii) initiates an amendment to an existing Medicaid waiver;
6519 (iv) applies for an extension of an application for a waiver or an existing Medicaid
6520 waiver; or
6521 (v) initiates a rate change that requires public notice under state or federal law.
6522 (b) The report required by Subsection (3)(a) shall:
6523 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior
6524 to the department implementing the proposed change; and
6525 (ii) include:
6526 (A) a description of the department's current practice or policy that the department is
6527 proposing to change;
6528 (B) an explanation of why the department is proposing the change;
6529 (C) the proposed change in services or reimbursement, including a description of the
6530 effect of the change;
6531 (D) the effect of an increase or decrease in services or benefits on individuals and
6532 families;
6533 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
6534 services in health or human service programs; and
6535 (F) the fiscal impact of the proposed change, including:
6536 (I) the effect of the proposed change on current or future appropriations from the
6537 Legislature to the department;

6538 (II) the effect the proposed change may have on federal matching dollars received by
6539 the state Medicaid program;
6540 (III) any cost shifting or cost savings within the department's budget that may result
6541 from the proposed change; and
6542 (IV) identification of the funds that will be used for the proposed change, including any
6543 transfer of funds within the department's budget.
6544 (4) (a) The Department of Human Services shall report to the Legislative Health and
6545 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance
6546 with Subsection (4)(b).
6547 (b) The report required by Subsection (4)(a) shall include:
6548 (i) changes made by the division or the department beginning July 1, 2010 that effect
6549 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid
6550 services or funding, that relate to care for children and youth in the custody of the Division of
6551 Child and Family Services or the Division of Juvenile Justice Services;
6552 (ii) the history and impact of the changes under Subsection (4)(b)(i);
6553 (iii) the Department of Human Service's plans for addressing the impact of the changes
6554 under Subsection (4)(b)(i); and
6555 (iv) ways to consolidate administrative functions within the Department of Human
6556 Services, the Department of Health, the Division of Child and Family Services, and the
6557 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth
6558 with mental health and substance disorder treatment needs.
6559 (5) Any rules adopted by the department under Subsection (2) are subject to review and
6560 reauthorization by the Legislature in accordance with Section 63G-3-502.
6561 (6) The department may, in its discretion, contract with the Department of Human
6562 Services or other qualified agencies for services in connection with the administration of the
6563 Medicaid program, including:
6564 (a) the determination of the eligibility of individuals for the program;
6565 (b) recovery of overpayments; and
6566 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
6567 control services, enforcement of fraud and abuse laws.
6568 (7) The department shall provide, by rule, disciplinary measures and sanctions for

6569 Medicaid providers who fail to comply with the rules and procedures of the program, provided
6570 that sanctions imposed administratively may not extend beyond:
6571 (a) termination from the program;
6572 (b) recovery of claim reimbursements incorrectly paid; and
6573 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.
6574 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
6575 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to
6576 be used by the division in accordance with the requirements of Section 1919 of Title XIX of
6577 the federal Social Security Act.
6578 (9) (a) In determining whether an applicant or recipient is eligible for a service or
6579 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
6580 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle
6581 designated by the applicant or recipient.
6582 (b) Before Subsection (9)(a) may be applied:
6583 (i) the federal government [~~must~~] shall:
6584 (A) determine that Subsection (9)(a) may be implemented within the state's existing
6585 public assistance-related waivers as of January 1, 1999;
6586 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or
6587 (C) determine that the state's waivers that permit dual eligibility determinations for
6588 cash assistance and Medicaid are no longer valid; and
6589 (ii) the department [~~must~~] shall determine that Subsection (9)(a) can be implemented
6590 within existing funding.
6591 (10) (a) For purposes of this Subsection (10):
6592 (i) "aged, blind, or disabled" shall be defined by administrative rule; and
6593 (ii) "spend down" means an amount of income in excess of the allowable income
6594 standard that [~~must~~] shall be paid in cash to the department or incurred through the medical
6595 services not paid by Medicaid.
6596 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is
6597 eligible for a service or benefit under this chapter, the department shall use 100% of the federal
6598 poverty level as:
6599 (i) the allowable income standard for eligibility for services or benefits; and

6600 (ii) the allowable income standard for eligibility as a result of spend down.
6601 (11) The department shall conduct internal audits of the Medicaid program, in
6602 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.
6603 (12) In order to determine the feasibility of contracting for direct Medicaid providers
6604 for primary care services, the department shall:
6605 (a) issue a request for information for direct contracting for primary services that shall
6606 provide that a provider shall exclusively serve all Medicaid clients:
6607 (i) in a geographic area;
6608 (ii) for a defined range of primary care services; and
6609 (iii) for a predetermined total contracted amount; and
6610 (b) by February 1, 2011, report to the Health and Human Services Appropriations
6611 Subcommittee on the response to the request for information under Subsection (12)(a).
6612 (13) (a) By December 31, 2010, the department shall:
6613 (i) determine the feasibility of implementing a three year patient-centered medical
6614 home demonstration project in an area of the state using existing budget funds; and
6615 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)
6616 to the Health and Human Services Appropriations Subcommittee.
6617 (b) If the department determines that the medical home demonstration project
6618 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations
6619 Subcommittee recommends that the demonstration project be implemented, the department
6620 shall:
6621 (i) implement the demonstration project; and
6622 (ii) by December 1, 2012, make recommendations to the Health and Human Services
6623 Appropriations Subcommittee regarding the:
6624 (A) continuation of the demonstration project;
6625 (B) expansion of the demonstration project to other areas of the state; and
6626 (C) cost savings incurred by the implementation of the demonstration project.
6627 (14) (a) The department may apply for and, if approved, implement a demonstration
6628 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.
6629 (b) A health opportunity account established under Subsection (14)(a) shall be an
6630 alternative to the existing benefits received by an individual eligible to receive Medicaid under

6631 this chapter.
6632 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.
6633 Section 165. Section **26-18-4** is amended to read:
6634 **26-18-4. Department standards for eligibility under Medicaid -- Funds for**
6635 **abortions.**
6636 (1) The department may develop standards and administer policies relating to
6637 eligibility under the Medicaid program as long as they are consistent with Subsection
6638 26-18-3(8). An applicant receiving Medicaid assistance may be limited to particular types of
6639 care or services or to payment of part or all costs of care determined to be medically necessary.
6640 (2) The department [~~shall not~~] may not provide any funds for medical, hospital, or
6641 other medical expenditures or medical services to otherwise eligible persons where the purpose
6642 of the assistance is to perform an abortion, unless the life of the mother would be endangered if
6643 an abortion were not performed.
6644 (3) Any employee of the department who authorizes payment for an abortion contrary
6645 to the provisions of this section is guilty of a class B misdemeanor and subject to forfeiture of
6646 office.
6647 (4) Any person or organization that, under the guise of other medical treatment,
6648 provides an abortion under auspices of the Medicaid program is guilty of a third degree felony
6649 and subject to forfeiture of license to practice medicine or authority to provide medical services
6650 and treatment.
6651 Section 166. Section **26-18-5** is amended to read:
6652 **26-18-5. Contracts for provision of medical services -- Federal provisions**
6653 **modifying department rules -- Compliance with Social Security Act.**
6654 (1) The department may contract with other public or private agencies to purchase or
6655 provide medical services in connection with the programs of the division. Where these
6656 programs are used by other state agencies, contracts shall provide that other state agencies
6657 transfer the state matching funds to the department in amounts sufficient to satisfy needs of the
6658 specified program.
6659 (2) All contracts for the provision or purchase of medical services shall be established
6660 on the basis of the state's fiscal year and shall remain uniform during the fiscal year insofar as
6661 possible. Contract terms shall include provisions for maintenance, administration, and service

6662 costs.
6663 (3) If a federal legislative or executive provision requires modifications or revisions in
6664 an eligibility factor established under this chapter as a condition for participation in medical
6665 assistance, the department may modify or change its rules as necessary to qualify for
6666 participation; providing, the provisions of this section [~~shall not~~] do not apply to department
6667 rules governing abortion.
6668 (4) The department shall comply with all pertinent requirements of the Social Security
6669 Act and all orders, rules, and regulations adopted thereunder when required as a condition of
6670 participation in benefits under the Social Security Act.
6671 Section 167. Section **26-18-10** is amended to read:
6672 **26-18-10. Utah Medical Assistance Program -- Policies and standards.**
6673 (1) The division shall develop a medical assistance program, which shall be known as
6674 the Utah Medical Assistance Program, for low income persons who are not eligible under the
6675 state plan for Medicaid under Title XIX of the Social Security Act or Medicare under Title
6676 XVIII of that act.
6677 (2) Persons in the custody of prisons, jails, halfway houses, and other nonmedical
6678 government institutions are not eligible for services provided under this section.
6679 (3) The department shall develop standards and administer policies relating to
6680 eligibility requirements, consistent with Subsection 26-18-3(8), for participation in the
6681 program, and for payment of medical claims for eligible persons.
6682 (4) The program shall be a payor of last resort. Before assistance is rendered the
6683 division shall investigate the availability of the resources of the spouse, father, mother, and
6684 adult children of the person making application.
6685 (5) The department shall determine what medically necessary care or services are
6686 covered under the program, including duration of care, and method of payment, which may be
6687 partial or in full.
6688 (6) The department [~~shall not~~] may not provide public assistance for medical, hospital,
6689 or other medical expenditures or medical services to otherwise eligible persons where the
6690 purpose of the assistance is for the performance of an abortion, unless the life of the mother
6691 would be endangered if an abortion were not performed.
6692 (7) The department may establish rules to carry out the provisions of this section.

6693 Section 168. Section **26-18-11** is amended to read:
6694 **26-18-11. Rural hospitals.**
6695 (1) For purposes of this section "rural hospital" means a hospital located outside of a
6696 standard metropolitan statistical area, as designated by the United States Bureau of the Census.
6697 (2) For purposes of the Medicaid program and the Utah Medical Assistance Program,
6698 the Division of Health Care Financing [~~shall not~~] may not discriminate among rural hospitals
6699 on the basis of size.
6700 Section 169. Section **26-18-501** is amended to read:
6701 **26-18-501. Definitions.**
6702 As used in this part:
6703 (1) "Certified program" means a nursing care facility program with Medicaid
6704 certification.
6705 (2) "Director" means the director of the Division of Health Care Financing.
6706 (3) "Medicaid certification" means the right to Medicaid reimbursement as a provider
6707 of a nursing care facility program as established by division rule.
6708 (4) (a) "Nursing care facility" means the following facilities licensed by the department
6709 under Chapter 21, Health Care Facility Licensing and Inspection Act:
6710 (i) skilled nursing homes;
6711 (ii) intermediate care facilities; and
6712 (iii) intermediate care facilities for the mentally retarded.
6713 (b) "Nursing care facility" does not mean a critical access hospital that meets the
6714 criteria of 42 U.S.C. 1395i-4(c)(2) (1998).
6715 (5) "Nursing care facility program" means the personnel, licenses, services, contracts
6716 and all other requirements that [~~must~~] shall be met for a nursing care facility to be eligible for
6717 Medicaid certification under this part and division rule.
6718 (6) "Physical facility" means the buildings or other physical structures where a nursing
6719 care facility program is operated.
6720 (7) "Service area" means the boundaries of the distinct geographic area served by a
6721 certified program as determined by the division in accordance with this part and division rule.
6722 Section 170. Section **26-18-502** is amended to read:
6723 **26-18-502. Purpose -- Medicaid certification of nursing care facilities.**

6724 (1) The Legislature finds:
6725 (a) that an oversupply of nursing care facility programs in the state adversely affects the
6726 state Medicaid program and the health of the people in the state; and
6727 (b) it is in the best interest of the state to prohibit Medicaid certification of nursing care
6728 facility programs, except as authorized by this part.
6729 (2) Medicaid reimbursement of nursing care facility programs is limited to:
6730 (a) the number of nursing care facility programs with Medicaid certification as of May
6731 4, 2004; and
6732 (b) additional nursing care facility programs approved for Medicaid certification under
6733 the provisions of Subsection 26-18-503(5).
6734 (3) The division [~~shall not~~] may not:
6735 (a) except as authorized by Section 26-18-503:
6736 (i) process initial applications for Medicaid certification or execute provider
6737 agreements with nursing care facility programs; or
6738 (ii) reinstate Medicaid certification for a nursing care facility whose certification
6739 expired or was terminated by action of the federal or state government; or
6740 (b) execute a Medicaid provider agreement with a certified program that moves its
6741 nursing care facility program to a different physical facility, except as authorized by Subsection
6742 26-18-503(3).
6743 Section 171. Section **26-18-503** is amended to read:
6744 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
6745 **programs -- Reimbursement methodology.**
6746 (1) The division may renew Medicaid certification of a certified program if the
6747 program, without lapse in service to Medicaid recipients, has its nursing care facility program
6748 certified by the division at the same physical facility as long as the licensed and certified bed
6749 capacity at the facility has not been expanded, unless the director has approved additional beds
6750 in accordance with Subsection (5).
6751 (2) (a) The division may issue a Medicaid certification for a new nursing care facility
6752 program if a current owner of the Medicaid certified program transfers its ownership of the
6753 Medicaid certification to the new nursing care facility program and the new nursing care
6754 facility program meets all of the following conditions:

6755 (i) the new nursing care facility program operates at the same physical facility as the
6756 previous Medicaid certified program;
6757 (ii) the new nursing care facility program gives a written assurance to the director in
6758 accordance with Subsection (4);
6759 (iii) the new nursing care facility program receives the Medicaid certification within
6760 one year of the date the previously certified program ceased to provide medical assistance to a
6761 Medicaid recipient; and
6762 (iv) the licensed and certified bed capacity at the facility has not been expanded, unless
6763 the director has approved additional beds in accordance with Subsection (5).
6764 (b) A nursing care facility program that receives Medicaid certification under the
6765 provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing
6766 care facility program if the new nursing care facility program:
6767 (i) is not owned in whole or in part by the previous nursing care facility program; or
6768 (ii) is not a successor in interest of the previous nursing care facility program.
6769 (3) The division may issue a Medicaid certification to a nursing care facility program
6770 that was previously a certified program but now resides in a new or renovated physical facility
6771 if the nursing care facility program meets all of the following:
6772 (a) the nursing care facility program met all applicable requirements for Medicaid
6773 certification at the time of closure;
6774 (b) the new or renovated physical facility is in the same county or within a five-mile
6775 radius of the original physical facility;
6776 (c) the time between which the certified program ceased to operate in the original
6777 facility and will begin to operate in the new physical facility is not more than three years;
6778 (d) if Subsection (3)(c) applies, the certified program notifies the department within 90
6779 days after ceasing operations in its original facility, of its intent to retain its Medicaid
6780 certification;
6781 (e) the provider gives written assurance to the director in accordance with Subsection
6782 (4) that no third party has a legitimate claim to operate a certified program at the previous
6783 physical facility; and
6784 (f) the bed capacity in the physical facility has not been expanded unless the director
6785 has approved additional beds in accordance with Subsection (5).

6786 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3)
6787 [~~must~~] shall give written assurances satisfactory to the director or [~~his~~] the director's designee
6788 that:
6789 (i) no third party has a legitimate claim to operate the certified program;
6790 (ii) the requesting entity agrees to defend and indemnify the department against any
6791 claims by a third party who may assert a right to operate the certified program; and
6792 (iii) if a third party is found, by final agency action of the department after exhaustion
6793 of all administrative and judicial appeal rights, to be entitled to operate a certified program at
6794 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).
6795 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):
6796 (i) the certified program shall immediately surrender its Medicaid certification and
6797 comply with division rules regarding billing for Medicaid and the provision of services to
6798 Medicaid patients; and
6799 (ii) the department shall transfer the surrendered Medicaid certification to the third
6800 party who prevailed under Subsection (4)(a)(iii).
6801 (5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional
6802 Medicaid certification when requested by a nursing care facility or other interested party if
6803 there is insufficient bed capacity with current certified programs in a service area. A
6804 determination of insufficient bed capacity shall be based on the nursing care facility or other
6805 interested party providing reasonable evidence of an inadequate number of beds in the county
6806 or group of counties impacted by the requested Medicaid certification based on:
6807 (i) current demographics which demonstrate nursing care facility occupancy levels of at
6808 least 90% for all existing and proposed facilities within a prospective three-year period;
6809 (ii) current nursing care facility occupancy levels of 90%; or
6810 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility
6811 requesting the additional certification.
6812 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program
6813 [~~must~~] shall demonstrate by an independent analysis that the nursing care facility can
6814 financially support itself at an after tax break-even net income level based on projected
6815 occupancy levels.
6816 (c) When making a determination to certify additional beds or an additional nursing

6817 care facility program under Subsection (5)(a):
6818 (i) the director shall consider whether the nursing care facility will offer specialized or
6819 unique services that are underserved in a service area;
6820 (ii) the director shall consider whether any Medicaid certified beds are subject to a
6821 claim by a previous certified program that may reopen under the provisions of Subsections (2)
6822 and (3); and
6823 (iii) the director may consider how to add additional capacity to the long-term care
6824 delivery system to best meet the needs of Medicaid recipients.
6825 (6) The department shall adopt administrative rules in accordance with Title 63G,
6826 Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility
6827 property reimbursement methodology to:
6828 (a) beginning July 1, 2008, only pay that portion of the property component of rates,
6829 representing actual bed usage by Medicaid clients as a percentage of the greater of:
6830 (i) actual occupancy; or
6831 (ii) (A) for a nursing care facility other than a facility described in Subsection
6832 (6)(a)(ii)(B), 85% of total bed capacity; or
6833 (B) for a rural nursing care facility, 65% of total bed capacity; and
6834 (b) beginning July 1, 2008, not allow for increases in reimbursement for property
6835 values without major renovation or replacement projects as defined by the department by rule.
6836 Section 172. Section **26-18-505** is amended to read:
6837 **26-18-505. Authorization to sell or transfer licensed Medicaid beds -- Duties of**
6838 **transferor -- Duties of transferee -- Duties of division.**
6839 (1) This section provides a method to transfer the license for a Medicaid bed from one
6840 nursing care facility program to another entity that is in addition to the authorization to transfer
6841 under Section 26-18-503.
6842 (2) (a) A nursing care facility program may transfer or sell one or more of its licenses
6843 for Medicaid beds in accordance with Subsection (2)(b) if:
6844 (i) at the time of the transfer, and with respect to the license for the Medicaid bed that
6845 will be transferred, the nursing care facility program that will transfer the Medicaid license
6846 meets all applicable regulations for Medicaid certification;
6847 (ii) 30 days prior to the transfer, the nursing care facility program gives a written

6848 assurance to the director and to the transferee in accordance with Subsection 26-18-503(4); and
6849 (iii) 30 days prior to the transfer, the nursing care facility program that will transfer the
6850 license for a Medicaid bed notifies the division in writing of:
6851 (A) the number of bed licenses that will be transferred;
6852 (B) the date of the transfer; and
6853 (C) the identity and location of the entity receiving the transferred licenses.
6854 (b) A nursing care facility program may transfer or sell one or more of its licenses for
6855 Medicaid beds to:
6856 (i) a nursing care facility program that has the same owner or successor in interest of
6857 the same owner;
6858 (ii) a nursing care facility program that has a different owner; or
6859 (iii) an entity that intends to establish a nursing care facility program.
6860 (3) An entity that receives or purchases a license for a Medicaid bed:
6861 (a) may receive a license for a Medicaid bed from more than one nursing care facility
6862 program;
6863 (b) within 14 days of seeking Medicaid certification of beds in the nursing care facility
6864 program, give the division notice of the total number of licenses for Medicaid beds that the
6865 entity received and who it received the licenses from;
6866 (c) may only seek Medicaid certification for the number of licensed beds in the nursing
6867 care facility program equal to the total number of licenses for Medicaid beds received by the
6868 entity, multiplied by a conversion factor of .7, and rounded down to the lowest integer;
6869 (d) does not have to demonstrate need for the Medicaid licensed beds under Subsection
6870 26-18-503(5);
6871 (e) [~~must~~] shall meet the standards for Medicaid certification other than those in
6872 Subsection 26-18-503(5), including personnel, services, contracts, and licensing of facilities
6873 under Chapter 21, Health Care Facility Licensing and Inspection Act; and
6874 (f) [~~must~~] shall obtain Medicaid certification for the licensed Medicaid beds within
6875 three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).
6876 (4) The conversion formula required by Subsection (3)(c) shall be calculated:
6877 (a) when the nursing care facility program applies to the Department for Medicaid
6878 certification of the licensed beds; and

6879 (b) based on the total number of licenses for Medicaid beds transferred to the nursing
6880 care facility at the time of the request for Medicaid certification.
6881 (5) (a) When the division receives notice of a transfer of a license for a Medicaid bed
6882 under Subsection (2)(a)(iii)(A), the division shall reduce the number of licenses for Medicaid
6883 beds at the transferring nursing care facility:
6884 (i) equal to the number of licenses transferred; and
6885 (ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).
6886 (b) For purposes of Section 26-18-502, the division shall approve Medicaid
6887 certification for the receiving entity:
6888 (i) in accordance with the formula established in Subsection (3)(c); and
6889 (ii) if:
6890 (A) the nursing care facility seeks Medicaid certification for the transferred licenses
6891 within the time limit required by Subsection (3)(f); and
6892 (B) the nursing care facility program meets other requirements for Medicaid
6893 certification under Subsection (3)(e).
6894 (c) A license for a Medicaid bed may not be approved for Medicaid certification
6895 without meeting the requirements of Sections 26-18-502 and 26-18-503 if:
6896 (i) the license for a Medicaid bed is transferred under this section but the receiving
6897 entity does not obtain Medicaid certification for the licensed bed within the time required by
6898 Subsection (3)(f); or
6899 (ii) the license for a Medicaid bed is transferred under this section but the license is no
6900 longer eligible for Medicaid certification as a result of the conversion factor established in
6901 Subsection (3)(c).
6902 Section 173. Section **26-19-7** is amended to read:
6903 **26-19-7. Notice of claim by recipient -- Department response -- Conditions for**
6904 **proceeding -- Collection agreements -- Department's right to intervene -- Department's**
6905 **interests protected -- Remitting funds -- Disbursements -- Liability and penalty for**
6906 **noncompliance.**
6907 (1) (a) A recipient may not file a claim, commence an action, or settle, compromise,
6908 release, or waive a claim against a third party for recovery of medical costs for an injury,
6909 disease, or disability for which the department has provided or has become obligated to provide

6910 medical assistance, without the department's written consent as provided in Subsection (2)(b)
6911 or (4).
6912 (b) For purposes of Subsection (1)(a), consent may be obtained if:
6913 (i) a recipient who files a claim, or commences an action against a third party notifies
6914 the department in accordance with Subsection (1)(d) within 10 days of making [~~his~~] the claim
6915 or commencing an action; or
6916 (ii) an attorney, who has been retained by the recipient to file a claim, or commence an
6917 action against a third party, notifies the department in accordance with Subsection (1)(d) of the
6918 recipient's claim:
6919 (A) within 30 days after being retained by the recipient for that purpose; or
6920 (B) within 30 days from the date the attorney either knew or should have known that
6921 the recipient received medical assistance from the department.
6922 (c) Service of the notice of claim to the department shall be made by certified mail,
6923 personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure,
6924 to the director of the Office of Recovery Services.
6925 (d) The notice of claim shall include the following information:
6926 (i) the name of the recipient;
6927 (ii) the recipient's Social Security number;
6928 (iii) the recipient's date of birth;
6929 (iv) the name of the recipient's attorney if applicable;
6930 (v) the name or names of individuals or entities against whom the recipient is making
6931 the claim, if known;
6932 (vi) the name of the third party's insurance carrier, if known;
6933 (vii) the date of the incident giving rise to the claim; and
6934 (viii) a short statement identifying the nature of the recipient's claim.
6935 (2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1),
6936 the department shall acknowledge receipt of the notice of the claim to the recipient or the
6937 recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the
6938 following:
6939 (i) if the department has a claim or lien pursuant to Section 26-19-5 or has become
6940 obligated to provide medical assistance; and

6941 (ii) whether the department is denying or granting written consent in accordance with
6942 Subsection (1)(a).
6943 (b) The department shall provide the recipient's attorney the opportunity to enter into a
6944 collection agreement with the department, with the recipient's consent, unless:
6945 (i) the department, prior to the receipt of the notice of the recipient's claim pursuant to
6946 Subsection (1), filed a written claim with the third party, the third party agreed to make
6947 payment to the department before the date the department received notice of the recipient's
6948 claim, and the agreement is documented in the department's record; or
6949 (ii) there has been a failure by the recipient's attorney to comply with any provision of
6950 this section by:
6951 (A) failing to comply with the notice provisions of this section;
6952 (B) failing or refusing to enter into a collection agreement;
6953 (C) failing to comply with the terms of a collection agreement with the department; or
6954 (D) failing to disburse funds owed to the state in accordance with this section.
6955 (c) (i) The collection agreement shall be:
6956 (A) consistent with this section and the attorney's obligation to represent the recipient
6957 and represent the state's claim; and
6958 (B) state the terms under which the interests of the department may be represented in
6959 an action commenced by the recipient.
6960 (ii) If the recipient's attorney enters into a written collection agreement with the
6961 department, or includes the department's claim in the recipient's claim or action pursuant to
6962 Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's
6963 total recovery and shall pay a proportionate share of the litigation expenses directly related to
6964 the action.
6965 (d) The department is not required to enter into a collection agreement with the
6966 recipient's attorney for collection of personal injury protection under Subsection
6967 31A-22-302(2).
6968 (3) (a) If the department receives notice pursuant to Subsection (1), and notifies the
6969 recipient and the recipient's attorney that the department will not enter into a collection
6970 agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or
6971 action against the third party if the recipient excludes from the claim:

6972 (i) any medical expenses paid by the department; or
6973 (ii) any medical costs for which the department is obligated to provide medical
6974 assistance.
6975 (b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall
6976 provide written notice to the third party of the exclusion of the department's claim for expenses
6977 under Subsection (3)(a)(i) or (ii).
6978 (4) If the department receives notice pursuant to Subsection (1), and does not respond
6979 within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's
6980 attorney:
6981 (a) may proceed with the recipient's claim or action against the third party;
6982 (b) may include the state's claim in the recipient's claim or action; and
6983 (c) may not negotiate, compromise, settle, or waive the department's claim without the
6984 department's consent.
6985 (5) The department has an unconditional right to intervene in an action commenced by
6986 a recipient against a third party for the purpose of recovering medical costs for which the
6987 department has provided or has become obligated to provide medical assistance.
6988 (6) (a) If the recipient proceeds without complying with the provisions of this section,
6989 the department is not bound by any decision, judgment, agreement, settlement, or compromise
6990 rendered or made on the claim or in the action.
6991 (b) The department may recover in full from the recipient or any party to which the
6992 proceeds were made payable all medical assistance which it has provided and retains its right to
6993 commence an independent action against the third party, subject to Subsection 26-19-5(3).
6994 (7) Any amounts assigned to and recoverable by the department pursuant to Sections
6995 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of
6996 Medical Collections within the Office of Recovery Services no later than five business days
6997 after receipt.
6998 (8) (a) Any amounts assigned to and recoverable by the department pursuant to
6999 Sections 26-19-4.5 and 26-19-5 collected directly by the recipient's attorney [~~must~~] shall be
7000 remitted to the Bureau of Medical Collections within the Office of Recovery Services no later
7001 than 30 days after the funds are placed in the attorney's trust account.
7002 (b) The date by which the funds [~~must~~] shall be remitted to the department may be

7003 modified based on agreement between the department and the recipient's attorney.
7004 (c) The department's consent to another date for remittance may not be unreasonably
7005 withheld.
7006 (d) If the funds are received by the recipient's attorney, no disbursements shall be made
7007 to the recipient or the recipient's attorney until the department's claim has been paid.
7008 (9) A recipient or recipient's attorney who knowingly and intentionally fails to comply
7009 with this section is liable to the department for:
7010 (a) the amount of the department's claim or lien pursuant to Subsection (5);
7011 (b) a penalty equal to 10% of the amount of the department's claim; and
7012 (c) [~~attorney's~~] attorney fees and litigation expenses related to recovering the
7013 department's claim.
7014 Section 174. Section **26-19-8** is amended to read:
7015 **26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not**
7016 **to limit time allowed for recovery.**
7017 (1) (a) Subject to Subsection (6), action commenced by the department under this
7018 chapter against a health insurance entity [~~must~~] shall be commenced within:
7019 (i) subject to Subsection (7), six years after the day on which the department submits
7020 the claim for recovery or payment for the health care item or service upon which the action is
7021 based; or
7022 (ii) six months after the date of the last payment for medical assistance, whichever is
7023 later.
7024 (b) An action against any other third party, the recipient, or anyone to whom the
7025 proceeds are payable [~~must~~] shall be commenced within:
7026 (i) four years after the date of the injury or onset of the illness; or
7027 (ii) six months after the date of the last payment for medical assistance, whichever is
7028 later.
7029 (2) The death of the recipient does not abate any right of action established by this
7030 chapter.
7031 (3) (a) No insurance policy issued or renewed after June 1, 1981, may contain any
7032 provision that limits the time in which the department may submit its claim to recover medical
7033 assistance benefits to a period of less than 24 months from the date the provider furnishes

7034 services or goods to the recipient.
7035 (b) No insurance policy issued or renewed after April 30, 2007, may contain any
7036 provision that limits the time in which the department may submit its claim to recover medical
7037 assistance benefits to a period of less than that described in Subsection (1)(a).
7038 (4) The provisions of this section do not apply to Section 26-19-13.5.
7039 (5) The provisions of this section supercede any other sections regarding the time limit
7040 in which an action [~~must~~] shall be commenced, including Section 75-7-509.
7041 (6) (a) Subsection (1)(a) extends the statute of limitations on a cause of action
7042 described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.
7043 (b) Subsection (1)(a) does not revive a cause of action that was time-barred on or
7044 before April 30, 2007.
7045 (7) An action described in Subsection (1)(a) may not be commenced if the claim for
7046 recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after
7047 the day on which the health care item or service upon which the claim is based was provided.
7048 Section 175. Section **26-20-3** is amended to read:
7049 **26-20-3. False statement or representation relating to medical benefits.**
7050 (1) A person [~~shall not~~] may not make or cause to be made a false statement or false
7051 representation of a material fact in an application for medical benefits.
7052 (2) A person [~~shall not~~] may not make or cause to be made a false statement or false
7053 representation of a material fact for use in determining rights to a medical benefit.
7054 (3) A person, who having knowledge of the occurrence of an event affecting [~~his~~] the
7055 person's initial or continued right to receive a medical benefit or the initial or continued right of
7056 any other person on whose behalf [~~he~~] the person has applied for or is receiving a medical
7057 benefit, [~~shall not~~] may not conceal or fail to disclose that event with intent to obtain a medical
7058 benefit to which the person or any other person is not entitled or in an amount greater than that
7059 to which the person or any other person is entitled.
7060 Section 176. Section **26-20-6** is amended to read:
7061 **26-20-6. Conspiracy to defraud prohibited.**
7062 A person [~~shall not~~] may not enter into an agreement, combination, or conspiracy to
7063 defraud the state by obtaining or aiding another to obtain the payment or allowance of a false,
7064 fictitious, or fraudulent claim for a medical benefit.

7065 Section 177. Section **26-20-8** is amended to read:
7066 **26-20-8. Knowledge of past acts not necessary to establish fact that false**
7067 **statement or representation knowingly made.**
7068 In prosecution under this chapter, it [~~shall not be~~] is not necessary to show that the
7069 person had knowledge of similar acts having been performed in the past on the part of persons
7070 acting on his behalf nor to show that the person had actual notice that the acts by the persons
7071 acting on his behalf occurred to establish the fact that a false statement or representation was
7072 knowingly made.
7073 Section 178. Section **26-20-9.5** is amended to read:
7074 **26-20-9.5. Civil penalties.**
7075 (1) The culpable mental state required for a civil violation of this chapter is "knowing"
7076 or "knowingly" which:
7077 (a) means that person, with respect to information:
7078 (i) has actual knowledge of the information;
7079 (ii) acts in deliberate ignorance of the truth or falsity of the information; or
7080 (iii) acts in reckless disregard of the truth or falsity of the information; and
7081 (b) does not require a specific intent to defraud.
7082 (2) Any person who violates this chapter shall, in all cases, in addition to other
7083 penalties provided by law, be required to:
7084 (a) make full and complete restitution to the state of all damages that the state sustains
7085 because of the person's violation of this chapter;
7086 (b) pay to the state its costs of enforcement of this chapter in that case, including [~~but~~
7087 ~~not limited to~~] the cost of investigators, attorneys, and other public employees, as determined
7088 by the state; and
7089 (c) pay to the state a civil penalty equal to:
7090 (i) three times the amount of damages that the state sustains because of the person's
7091 violation of this chapter; and
7092 (ii) not less than $5,000 or more than $10,000 for each claim filed or act done in
7093 violation of this chapter.
7094 (3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as
7095 part of its judgment in both criminal and civil actions.

7096 (4) A criminal action need not be brought against a person in order for that person to be
7097 civilly liable under this section.
7098 Section 179. Section **26-20-12** is amended to read:
7099 **26-20-12. Violation of other laws.**
7100 (1) The provisions of this chapter are:
7101 (a) not exclusive, and the remedies provided for in this chapter are in addition to any
7102 other remedies provided for under:
7103 (i) any other applicable law; or
7104 (ii) common law; and
7105 (b) to be liberally construed and applied to:
7106 (i) effectuate the chapter's remedial and deterrent purposes; and
7107 (ii) serve the public interest.
7108 (2) If any provision of this chapter or the application of this chapter to any person or
7109 circumstance is held unconstitutional:
7110 (a) the remaining provisions of this chapter [~~shall not be~~] <u>are not</u> affected; and
7111 (b) the application of this chapter to other persons or circumstances [~~shall not be~~] <u>are</u>
7112 <u>not</u> affected.
7113 Section 180. Section **26-20-14** is amended to read:
7114 **26-20-14. Investigations -- Civil investigative demands.**
7115 (1) The attorney general may take investigative action under Subsection (2) if the
7116 attorney general has reason to believe that:
7117 (a) a person has information or custody or control of documentary material relevant to
7118 the subject matter of an investigation of an alleged violation of this chapter;
7119 (b) a person is committing, has committed, or is about to commit a violation of this
7120 chapter; or
7121 (c) it is in the public interest to conduct an investigation to ascertain whether or not a
7122 person is committing, has committed, or is about to commit a violation of this chapter.
7123 (2) In taking investigative action, the attorney general may:
7124 (a) require the person to file on a prescribed form a statement in writing, under oath or
7125 affirmation describing:
7126 (i) the facts and circumstances concerning the alleged violation of this chapter; and

7127 (ii) other information considered necessary by the attorney general;
7128 (b) examine under oath a person in connection with the alleged violation of this
7129 chapter; and
7130 (c) in accordance with Subsections (7) through (18), execute in writing, and serve on
7131 the person, a civil investigative demand requiring the person to produce the documentary
7132 material and permit inspection and copying of the material.
7133 (3) The attorney general may not release or disclose information that is obtained under
7134 Subsection (2)(a) or (b), or any documentary material or other record derived from the
7135 information obtained under Subsection (2)(a) or (b), except:
7136 (a) by court order for good cause shown;
7137 (b) with the consent of the person who provided the information;
7138 (c) to an employee of the attorney general or the department;
7139 (d) to an agency of this state, the United States, or another state;
7140 (e) to a special assistant attorney general representing the state in a civil action;
7141 (f) to a political subdivision of this state; or
7142 (g) to a person authorized by the attorney general to receive the information.
7143 (4) The attorney general may use documentary material derived from information
7144 obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general
7145 determines necessary in the enforcement of this chapter, including presentation before a court.
7146 (5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to
7147 submit to an examination as required by Subsection (2)(b), the attorney general may file in
7148 district court a complaint for an order to compel the person to within a period stated by court
7149 order:
7150 (i) file the statement required by Subsection (2)(a); or
7151 (ii) submit to the examination required by Subsection (2)(b).
7152 (b) Failure to comply with an order entered under Subsection (5)(a) is punishable as
7153 contempt.
7154 (6) A civil investigative demand [~~must~~] shall:
7155 (a) state the rule or statute under which the alleged violation of this chapter is being
7156 investigated;
7157 (b) describe the:

7158 (i) general subject matter of the investigation; and
7159 (ii) class or classes of documentary material to be produced with reasonable specificity
7160 to fairly indicate the documentary material demanded;
7161 (c) designate a date within which the documentary material is to be produced; and
7162 (d) identify an authorized employee of the attorney general to whom the documentary
7163 material is to be made available for inspection and copying.
7164 (7) A civil investigative demand may require disclosure of any documentary material
7165 that is discoverable under the Utah Rules of Civil Procedure.
7166 (8) Service of a civil investigative demand may be made by:
7167 (a) delivering an executed copy of the demand to the person to be served or to a
7168 partner, an officer, or an agent authorized by appointment or by law to receive service of
7169 process on behalf of that person;
7170 (b) delivering an executed copy of the demand to the principal place of business in this
7171 state of the person to be served; or
7172 (c) mailing by registered or certified mail an executed copy of the demand addressed to
7173 the person to be served:
7174 (i) at the person's principal place of business in this state; or
7175 (ii) if the person has no place of business in this state, to the person's principal office or
7176 place of business.
7177 (9) Documentary material demanded in a civil investigative demand shall be produced
7178 for inspection and copying during normal business hours at the office of the attorney general or
7179 as agreed by the person served and the attorney general.
7180 (10) The attorney general may not produce for inspection or copying or otherwise
7181 disclose the contents of documentary material obtained pursuant to a civil investigative demand
7182 except:
7183 (a) by court order for good cause shown;
7184 (b) with the consent of the person who produced the information;
7185 (c) to an employee of the attorney general or the department;
7186 (d) to an agency of this state, the United States, or another state;
7187 (e) to a special assistant attorney general representing the state in a civil action;
7188 (f) to a political subdivision of this state; or

7189 (g) to a person authorized by the attorney general to receive the information.
7190 (11) (a) With respect to documentary material obtained pursuant to a civil investigative
7191 demand, the attorney general shall prescribe reasonable terms and conditions allowing such
7192 documentary material to be available for inspection and copying by the person who produced
7193 the material or by an authorized representative of that person.
7194 (b) The attorney general may use such documentary material or copies of it as the
7195 attorney general determines necessary in the enforcement of this chapter, including presentation
7196 before a court.
7197 (12) A person may file a complaint, stating good cause, to extend the return date for the
7198 demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be
7199 filed in district court [~~and must be filed~~] before the earlier of:
7200 (a) the return date specified in the demand; or
7201 (b) the 20th day after the date the demand is served.
7202 (13) Except as provided by court order, a person who has been served with a civil
7203 investigative demand shall comply with the terms of the demand.
7204 (14) (a) A person who has committed a violation of this chapter in relation to the
7205 Medicaid program in this state or to any other medical benefit program administered by the
7206 state has submitted to the jurisdiction of this state.
7207 (b) Personal service of a civil investigative demand under this section may be made on
7208 the person described in Subsection (14)(a) outside of this state.
7209 (15) This section does not limit the authority of the attorney general to conduct
7210 investigations or to access a person's documentary materials or other information under another
7211 state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.
7212 (16) The attorney general may file a complaint in district court for an order to enforce
7213 the civil investigative demand if:
7214 (a) a person fails to comply with a civil investigative demand; or
7215 (b) copying and reproduction of the documentary material demanded:
7216 (i) cannot be satisfactorily accomplished; and
7217 (ii) the person refuses to surrender the documentary material.
7218 (17) If a complaint is filed under Subsection (16), the court may determine the matter
7219 presented and may enter an order to enforce the civil investigative demand.

7220 (18) Failure to comply with a final order entered under Subsection (17) is punishable
7221 by contempt.
7222 Section 181. Section **26-21-9** is amended to read:
7223 **26-21-9. Application for license -- Information required -- Public records.**
7224 (1) An application for license shall be made to the department in a form prescribed by
7225 the department. The application and other documentation requested by the department as part
7226 of the application process shall require such information as the committee determines
7227 necessary to ensure compliance with established rules.
7228 (2) Information received by the department in reports and inspections shall be public
7229 records, except the information [~~shall not~~] may not be disclosed if it directly or indirectly
7230 identifies any individual other than the owner or operator of a health facility (unless disclosure
7231 is required by law) or if its disclosure would otherwise constitute an unwarranted invasion of
7232 personal privacy.
7233 (3) Information received by the department from a health care facility, pertaining to
7234 that facility's accreditation by a voluntary accrediting organization, shall be private data except
7235 for a summary prepared by the department related to licensure standards.
7236 Section 182. Section **26-21-9.5** is amended to read:
7237 **26-21-9.5. Criminal background check and Licensing Information System check.**
7238 (1) For purposes of this section:
7239 (a) "Covered employer" means an individual who:
7240 (i) is not a covered health care facility;
7241 (ii) is not a licensed business within the state; and
7242 (iii) is hiring an individual to provide services to an elderly or disabled person in the
7243 home of the elderly or disabled person.
7244 (b) "Covered health care facility" means:
7245 (i) home health care agencies;
7246 (ii) hospices;
7247 (iii) nursing care facilities;
7248 (iv) assisted-living facilities;
7249 (v) small health care facilities; and
7250 (vi) end stage renal disease facilities.

7251 (c) "Covered person" includes:
7252 (i) the following people who provide direct patient care:
7253 (A) employees;
7254 (B) volunteers; and
7255 (C) people under contract with the covered health care facility; and
7256 (ii) for residential settings, any individual residing in the home where the assisted
7257 living or small health care program is to be licensed who:
7258 (A) is 18 years of age or older; or
7259 (B) is a child between the age of 12 and 17 years of age; however, the identifying
7260 information required for a child between the age of 12 and 17 does not include fingerprints.
7261 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
7262 covered health care facility at the time of initial application for a license and license renewal
7263 shall:
7264 (a) submit the name and other identifying information of each covered person at the
7265 covered facility who:
7266 (i) provides direct care to a patient; and
7267 (ii) has been the subject of a criminal background check within the preceding
7268 three-year period by a public or private entity recognized by the department; and
7269 (b) submit the name and other identifying information, which may include fingerprints,
7270 of each covered person at the covered facility who has not been the subject of a criminal
7271 background check in accordance with Subsection (2)(a)(ii).
7272 (3) (a) The department shall forward the information received under Subsection (2)(b)
7273 or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of
7274 Public Safety for processing to determine whether the individual has been convicted of any
7275 crime.
7276 (b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not
7277 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
7278 national criminal history record check. The fingerprints shall be submitted to the FBI through
7279 the Criminal Investigations and Technical Services Division. The individual or licensee is
7280 responsible for the cost of the fingerprinting and national criminal history check.
7281 (4) The department may determine whether:

7282 (a) an individual whose name and other identifying information has been submitted
7283 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
7284 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
7285 of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a
7286 possible perpetrator of child abuse or neglect is relevant to the employment activities of that
7287 individual;
7288 (b) an individual whose name and other identifying information has been submitted
7289 pursuant to Subsection (2) or (6)(b) and who provides direct care to disabled or elder adults, or
7290 who is residing in a residential home that is a facility licensed to provide direct care to disabled
7291 or elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or
7292 elder adult by accessing in accordance with Subsection (5) the database created in Section
7293 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect,
7294 or exploitation is relevant to the employment activities or residence of that person; or
7295 (c) an individual whose name or other identifying information has been submitted
7296 pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an
7297 act which if committed by an adult would be a felony or a misdemeanor if:
7298 (i) the individual is under the age of 28 years; or
7299 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
7300 or is currently subject to a plea in abeyance or diversion agreement for any felony or
7301 misdemeanor.
7302 (5) (a) The department shall:
7303 (i) designate persons within the department to access:
7304 (A) the Licensing Information System described in Section 62A-4a-1006;
7305 (B) court records under Subsection 78A-6-323(6);
7306 (C) the database described in Subsection (4)(b); and
7307 (D) juvenile court records as permitted by Subsection (4)(c); and
7308 (ii) adopt measures to:
7309 (A) protect the security of the Licensing Information System, the court records, and the
7310 database; and
7311 (B) strictly limit access to the Licensing Information System, the court records, and the
7312 database to those designated under Subsection (5)(a)(i).

7313 (b) Those designated under Subsection (5)(a)(i) shall receive training from the
7314 Department of Human Services with respect to:
7315 (i) accessing the Licensing Information System, the court records, and the database;
7316 (ii) maintaining strict security; and
7317 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
7318 information.
7319 (c) Those designated under Subsection (5)(a)(i):
7320 (i) are the only ones in the department with the authority to access the Licensing
7321 Information System, the court records, and database; and
7322 (ii) may only access the Licensing Information System, the court records, and the
7323 database for the purpose of licensing and in accordance with the provisions of Subsection (4).
7324 (6) (a) Within 10 days of initially hiring a covered individual, a covered health care
7325 facility shall submit the covered individual's information to the department in accordance with
7326 Subsection (2).
7327 (b) (i) Prior to, or within 10 days of initially hiring an individual to provide care to an
7328 elderly adult or a disabled person in the home of the elderly adult or disabled person, a covered
7329 employer may submit the employed individual's information to the department.
7330 (ii) The department shall:
7331 (A) in accordance with Subsections (4) and (6)(c) of this section, and Subsection
7332 62A-3-311.1(4)(b), determine whether the individual has a substantiated finding of abuse,
7333 neglect, or exploitation of a minor or an elderly adult; and
7334 (B) in accordance with Subsection (9), inform the covered employer of the
7335 department's findings.
7336 (c) A covered employer:
7337 (i) [~~must~~] shall certify to the department that the covered employer intends to hire, or
7338 has hired, the individual whose information the covered employer has submitted to the
7339 department for the purpose of providing care to an elderly adult or a disabled person in the
7340 home of the elderly adult or disabled person;
7341 (ii) [~~must~~] shall pay the reasonable fees established by the department under
7342 Subsection (8); and
7343 (iii) commits an infraction if the covered employer intentionally misrepresents any fact

7344 certified under Subsection (6)(c)(i).
7345 (7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
7346 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
7347 who has been convicted of a criminal offense, or a person described in Subsection (4), may
7348 provide direct care to a patient in a covered health care facility, taking into account the nature
7349 of the criminal conviction or substantiated finding and its relation to patient care.
7350 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for
7351 a criminal background check processed pursuant to this section.
7352 (9) The department may inform the covered health care facility or a covered employer
7353 of information discovered under Subsection (4) with respect to a covered individual, or an
7354 individual whose name is submitted by a covered employer.
7355 (10) (a) A covered health care facility is not civilly liable for submitting information to
7356 the department as required by this section.
7357 (b) A covered employer is not civilly liable for submitting information to the
7358 department as permitted by this section if the covered employer:
7359 (i) complies with Subsection (6)(c)(i); and
7360 (ii) does not use the information obtained about an individual under this section for any
7361 purpose other than hiring decisions directly related to the care of the elderly adult or disabled
7362 person.
7363 Section 183. Section **26-23-7** is amended to read:
7364 **26-23-7. Application of enforcement procedures and penalties.**
7365 Enforcement procedures and penalties provided in this chapter [~~shall not~~] do not apply
7366 to other chapters in this title which provide for specific enforcement procedures and penalties.
7367 Section 184. Section **26-23-10** is amended to read:
7368 **26-23-10. Religious exemptions from code -- Regulation of state-licensed healing**
7369 **system practice unaffected by code.**
7370 (1) [~~Nothing~~] (a) Except as provided in Subsection (1)(b), nothing in this code shall be
7371 construed to compel any person to submit to any medical or dental examination or treatment
7372 under the authority of this code when such person, or the parent or guardian of any such person
7373 objects to such examination or treatment on religious grounds, or to permit any discrimination
7374 against such person on account of such objection[~~; provided, that~~].

7375 (b) An exemption from medical or dental examination [~~shall not~~], described in
7376 Subsection (1)(a), may not be granted if the executive director has reasonable cause to suspect
7377 a substantial menace to the health of other persons exposed to contact with the unexamined
7378 person.
7379 (2) Nothing in this code shall be construed as authorizing the supervision, regulation,
7380 or control of the remedial care or treatment of residents in any home or institution conducted
7381 for those who rely upon treatment by prayer or spiritual means in accordance with the creed or
7382 tenets of any well recognized church or religious denomination, provided the statutes and
7383 regulations on sanitation are complied with.
7384 (3) Nothing in this code shall be construed or used to amend any statute now in force
7385 pertaining to the scope of practice of any state-licensed healing system.
7386 Section 185. Section **26-23b-104** is amended to read:
7387 **26-23b-104. Authorization to report.**
7388 (1) A health care provider is authorized to report to the department any case of a
7389 reportable emergency illness or health condition in any person when:
7390 (a) the health care provider knows of a confirmed case; or
7391 (b) the health care provider believes, based on [~~his~~] the health care provider's
7392 professional judgment that a person likely harbors a reportable emergency illness or health
7393 condition.
7394 (2) A report pursuant to this section shall include, if known:
7395 (a) the name of the facility submitting the report;
7396 (b) a patient identifier that allows linkage with the patient's record for follow-up
7397 investigation if needed;
7398 (c) the date and time of visit;
7399 (d) the patient's age and sex;
7400 (e) the zip code of the patient's residence;
7401 (f) the reportable illness or condition detected or suspected;
7402 (g) diagnostic information and, if available, diagnostic codes assigned to the visit; and
7403 (h) whether the patient was admitted to the hospital.
7404 (3) (a) If the department determines that a public health emergency exists, the
7405 department may, with the concurrence of the governor and the executive director or in the

7406 absence of the executive director, [~~his~~] the executive director's designee, issue a public health
7407 emergency order and mandate reporting under this section for a limited reasonable period of
7408 time, as necessary to respond to the public health emergency.
7409 (b) The department may not mandate reporting under this subsection for more than 90
7410 days. If more than 90 days is needed to abate the public health emergency declared under
7411 Subsection (3)(a), the department [~~must~~] shall obtain the concurrence of the governor to extend
7412 the period of time beyond 90 days.
7413 (4) (a) Unless the provisions of Subsection (3) apply, a health care provider is not
7414 subject to penalties for failing to submit a report under this section.
7415 (b) If the provisions of Subsection (3) apply, a health care provider is subject to the
7416 penalties of Subsection 26-23b-103(3) for failure to make a report under this section.
7417 Section 186. Section **26-25-5** is amended to read:
7418 **26-25-5. Violation of chapter a misdemeanor -- Civil liability.**
7419 (1) Any use, release or publication, negligent or otherwise, contrary to the provisions of
7420 this chapter [~~shall be~~] is a class B misdemeanor.
7421 (2) Subsection (1) [~~shall not~~] does not relieve the person or organization responsible
7422 for such use, release, or publication from civil liability.
7423 Section 187. Section **26-28-105** is amended to read:
7424 **26-28-105. Manner of making anatomical gift before donor's death.**
7425 (1) A donor may make an anatomical gift:
7426 (a) by authorizing a statement or symbol indicating that the donor has made an
7427 anatomical gift to be imprinted on the donor's driver license or identification card;
7428 (b) in a will;
7429 (c) during a terminal illness or injury of the donor, by any form of communication
7430 addressed to at least two adults, at least one of whom is a disinterested witness; or
7431 (d) as provided in Subsection (2).
7432 (2) A donor or other person authorized to make an anatomical gift under Section
7433 26-28-104 may make a gift by a donor card or other record signed by the donor or other person
7434 making the gift or by authorizing that a statement or symbol indicating that the donor has made
7435 an anatomical gift be included on a donor registry. If the donor or other person is physically
7436 unable to sign a record, the record may be signed by another individual at the direction of the

7437 donor or other person and [~~must~~] shall:
7438 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,
7439 who have signed at the request of the donor or the other person; and
7440 (b) state that it has been signed and witnessed as provided in Subsection (2)(a).
7441 (3) Revocation, suspension, expiration, or cancellation of a driver license or
7442 identification card upon which an anatomical gift is indicated does not invalidate the gift.
7443 (4) An anatomical gift made by will takes effect upon the donor's death whether or not
7444 the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.
7445 Section 188. Section **26-28-106** is amended to read:
7446 **26-28-106. Amending or revoking anatomical gift before donor's death.**
7447 (1) Subject to Section 26-28-108, a donor or other person authorized to make an
7448 anatomical gift under Section 26-28-104 may amend or revoke an anatomical gift by:
7449 (a) a record signed by:
7450 (i) the donor;
7451 (ii) the other person; or
7452 (iii) subject to Subsection (2), another individual acting at the direction of the donor or
7453 the other person if the donor or other person is physically unable to sign; or
7454 (b) a later-executed document of gift that amends or revokes a previous anatomical gift
7455 or portion of an anatomical gift, either expressly or by inconsistency.
7456 (2) A record signed pursuant to Subsection (1)(a)(iii) [~~must~~] shall:
7457 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,
7458 who have signed at the request of the donor or the other person; and
7459 (b) state that it has been signed and witnessed as provided in Subsection (1)(a).
7460 (3) Subject to Section 26-28-108, a donor or other person authorized to make an
7461 anatomical gift under Section 26-28-104 may revoke an anatomical gift by the destruction or
7462 cancellation of the document of gift, or the portion of the document of gift used to make the
7463 gift, with the intent to revoke the gift.
7464 (4) A donor may amend or revoke an anatomical gift that was not made in a will by any
7465 form of communication during a terminal illness or injury addressed to at least two adults, at
7466 least one of whom is a disinterested witness.
7467 (5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the

7468 manner provided for amendment or revocation of wills or as provided in Subsection (1).
7469 Section 189. Section **26-28-107** is amended to read:
7470 **26-28-107. Refusal to make anatomical gift -- Effect of refusal.**
7471 (1) An individual may refuse to make an anatomical gift of the individual's body or part
7472 by:
7473 (a) a record signed by:
7474 (i) the individual; or
7475 (ii) subject to Subsection (2), another individual acting at the direction of the individual
7476 if the individual is physically unable to sign;
7477 (b) the individual's will, whether or not the will is admitted to probate or invalidated
7478 after the individual's death; or
7479 (c) any form of communication made by the individual during the individual's terminal
7480 illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
7481 (2) A record signed pursuant to Subsection (1)(a)(ii) [~~must~~] shall:
7482 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,
7483 who have signed at the request of the individual; and
7484 (b) state that it has been signed and witnessed as provided in Subsection (1)(a).
7485 (3) An individual who has made a refusal may amend or revoke the refusal:
7486 (a) in the manner provided in Subsection (1) for making a refusal;
7487 (b) by subsequently making an anatomical gift pursuant to Section 26-28-105 that is
7488 inconsistent with the refusal; or
7489 (c) by destroying or canceling the record evidencing the refusal, or the portion of the
7490 record used to make the refusal, with the intent to revoke the refusal.
7491 (4) Except as otherwise provided in Subsection 26-28-108(8), in the absence of an
7492 express, contrary indication by the individual set forth in the refusal, an individual's unrevoked
7493 refusal to make an anatomical gift of the individual's body or part bars all other persons from
7494 making an anatomical gift of the individual's body or part.
7495 Section 190. Section **26-28-111** is amended to read:
7496 **26-28-111. Persons that may receive anatomical gift -- Purpose of anatomical gift.**
7497 (1) An anatomical gift may be made to the following persons named in the document
7498 of gift:

7499 (a) a hospital, accredited medical school, dental school, college, university, organ
7500 procurement organization, or other appropriate person, for research or education;
7501 (b) subject to Subsection (2), an individual designated by the person making the
7502 anatomical gift if the individual is the recipient of the part; or
7503 (c) an eye bank or tissue bank.
7504 (2) If an anatomical gift to an individual under Subsection (1)(b) cannot be
7505 transplanted into the individual, the part passes in accordance with Subsection (7) in the
7506 absence of an express, contrary indication by the person making the anatomical gift.
7507 (3) If an anatomical gift of one or more specific parts or of all parts is made in a
7508 document of gift that does not name a person described in Subsection (1) but identifies the
7509 purpose for which an anatomical gift may be used, the following rules apply:
7510 (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the
7511 gift passes to the appropriate eye bank.
7512 (b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the
7513 gift passes to the appropriate tissue bank.
7514 (c) If the part is an organ and the gift is for the purpose of transplantation or therapy,
7515 the gift passes to the appropriate organ procurement organization as custodian of the organ.
7516 (d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or
7517 education, the gift passes to the appropriate procurement organization.
7518 (4) For the purpose of Subsection (3), if there is more than one purpose of an
7519 anatomical gift set forth in the document of gift but the purposes are not set forth in any
7520 priority, the gift [~~must~~] shall be used for transplantation or therapy, if suitable. If the gift
7521 cannot be used for transplantation or therapy, the gift may be used for research or education.
7522 (5) If an anatomical gift of one or more specific parts is made in a document of gift that
7523 does not name a person described in Subsection (1) and does not identify the purpose of the
7524 gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance
7525 with Subsection (7).
7526 (6) If a document of gift specifies only a general intent to make an anatomical gift by
7527 words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar
7528 import, the gift may be used only for transplantation or therapy, and the gift passes in
7529 accordance with Subsection (7).

7530 (7) For purposes of Subsections (2), (5), and (7) the following rules apply:
7531 (a) If the part is an eye, the gift passes to the appropriate eye bank.
7532 (b) If the part is tissue, the gift passes to the appropriate tissue bank.
7533 (c) If the part is an organ, the gift passes to the appropriate organ procurement
7534 organization as custodian of the organ.
7535 (8) An anatomical gift of an organ for transplantation or therapy, other than an
7536 anatomical gift under Subsection (1)(b), passes to the organ procurement organization as
7537 custodian of the organ.
7538 (9) If an anatomical gift does not pass pursuant to Subsections (2) through (8) or the
7539 decedent's body or part is not used for transplantation, therapy, research, or education, custody
7540 of the body or part passes to the person under obligation to dispose of the body or part.
7541 (10) A person may not accept an anatomical gift if the person knows that the gift was
7542 not effectively made under Section 26-28-105 or 26-28-110 or if the person knows that the
7543 decedent made a refusal under Section 26-28-107 that was not revoked. For purposes of this
7544 Subsection (10), if a person knows that an anatomical gift was made on a document of gift, the
7545 person is considered to know of any amendment or revocation of the gift or any refusal to make
7546 an anatomical gift on the same document of gift.
7547 (11) Except as otherwise provided in Subsection (1)(b), nothing in this chapter affects
7548 the allocation of organs for transplantation or therapy.
7549 Section 191. Section **26-28-114** is amended to read:
7550 **26-28-114. Rights and duties of procurement organization and others.**
7551 (1) When a hospital refers an individual at or near death to a procurement organization,
7552 the organization shall make a reasonable search of the records of the Department of Public
7553 Safety and any donor registry that it knows exists for the geographical area in which the
7554 individual resides to ascertain whether the individual has made an anatomical gift.
7555 (2) A procurement organization [~~must~~] shall be allowed reasonable access to
7556 information in the records of the Department of Public Safety to ascertain whether an
7557 individual at or near death is a donor.
7558 (3) When a hospital refers an individual at or near death to a procurement organization,
7559 the organization may conduct any reasonable examination necessary to ensure the medical
7560 suitability of a part that is or could be the subject of an anatomical gift for transplantation,

7561 therapy, research, or education from a donor or a prospective donor. During the examination
7562 period, measures necessary to ensure the medical suitability of the part may not be withdrawn
7563 unless the hospital or procurement organization knows that the individual expressed a contrary
7564 intent.
7565 (4) Unless prohibited by law other than this chapter, at any time after a donor's death,
7566 the person to which a part passes under Section 26-28-111 may conduct any reasonable
7567 examination necessary to ensure the medical suitability of the body or part for its intended
7568 purpose.
7569 (5) Unless prohibited by law other than this chapter, an examination under Subsection
7570 (3) or (4) may include an examination of all medical and dental records of the donor or
7571 prospective donor.
7572 (6) Upon the death of a minor who was a donor or had signed a refusal, unless a
7573 procurement organization knows the minor is emancipated, the procurement organization shall
7574 conduct a reasonable search for the parents of the minor and provide the parents with an
7575 opportunity to revoke or amend the anatomical gift or revoke the refusal.
7576 (7) Upon referral by a hospital under Subsection (1), a procurement organization shall
7577 make a reasonable search for any person listed in Section 26-28-109 having priority to make an
7578 anatomical gift on behalf of a prospective donor. If a procurement organization receives
7579 information that an anatomical gift to any other person was made, amended, or revoked, it shall
7580 promptly advise the other person of all relevant information.
7581 (8) Subject to Subsection 26-28-111(9) and Section 26-28-123, the rights of the person
7582 to which a part passes under Section 26-28-111 are superior to the rights of all others with
7583 respect to the part. The person may accept or reject an anatomical gift in whole or in part.
7584 Subject to the terms of the document of gift and this chapter, a person that accepts an
7585 anatomical gift of an entire body may allow embalming, burial or cremation, and use of
7586 remains in a funeral service. If the gift is of a part, the person to which the part passes under
7587 Section 26-28-111, upon the death of the donor and before embalming, burial, or cremation,
7588 shall cause the part to be removed without unnecessary mutilation.
7589 (9) Neither the physician who attends the decedent at death nor the physician who
7590 determines the time of the decedent's death may participate in the procedures for removing or
7591 transplanting a part from the decedent.

7592 (10) A physician or technician may remove a donated part from the body of a donor
7593 that the physician or technician is qualified to remove.
7594 Section 192. Section **26-28-120** is amended to read:
7595 **26-28-120. Donor registry.**
7596 (1) The Department of Public Safety may establish or contract for the establishment of
7597 a donor registry.
7598 (2) The Driver License Division of the Department of Public Safety shall cooperate
7599 with a person that administers any donor registry that this state establishes, contracts for, or
7600 recognizes for the purpose of transferring to the donor registry all relevant information
7601 regarding a donor's making, amendment to, or revocation of an anatomical gift.
7602 (3) A donor registry [~~must~~] shall:
7603 (a) allow a donor or other person authorized under Section 26-28-104 to include on the
7604 donor registry a statement or symbol that the donor has made, amended, or revoked an
7605 anatomical gift;
7606 (b) be accessible to a procurement organization to allow it to obtain relevant
7607 information on the donor registry to determine, at or near death of the donor or a prospective
7608 donor, whether the donor or prospective donor has made, amended, or revoked an anatomical
7609 gift; and
7610 (c) be accessible for purposes of Subsections (3)(a) and (b) seven days a week on a
7611 24-hour basis.
7612 (4) Personally identifiable information on a donor registry about a donor or prospective
7613 donor may not be used or disclosed without the express consent of the donor, prospective
7614 donor, or person that made the anatomical gift for any purpose other than to determine, at or
7615 near death of the donor or prospective donor, whether the donor or prospective donor has
7616 made, amended, or revoked an anatomical gift.
7617 (5) This section does not prohibit any person from creating or maintaining a donor
7618 registry that is not established by or under contract with the state. Any such registry [~~must~~]
7619 shall comply with Subsections (3) and (4).
7620 Section 193. Section **26-28-121** is amended to read:
7621 **26-28-121. Effect of anatomical gift on advance health care directive.**
7622 (1) As used in this section:

7623 (a) "Advance health care directive" means a power of attorney for health care or a
7624 record signed or authorized by a prospective donor containing the prospective donor's direction
7625 concerning a health care decision for the prospective donor.
7626 (b) "Declaration" means a record signed by a prospective donor specifying the
7627 circumstances under which a life support system may be withheld or withdrawn from the
7628 prospective donor.
7629 (c) "Health care decision" means any decision regarding the health care of the
7630 prospective donor.
7631 (2) If a prospective donor has a declaration or advance health care directive and the
7632 terms of the declaration or directive and the express or implied terms of a potential anatomical
7633 gift are in conflict with regard to the administration of measures necessary to ensure the
7634 medical suitability of a part for transplantation or therapy, the prospective donor's attending
7635 physician and prospective donor shall confer to resolve the conflict. If the prospective donor is
7636 incapable of resolving the conflict, an agent acting under the prospective donor's declaration or
7637 directive, or if no declaration or directive exists or the agent is not reasonably available,
7638 another person authorized by a law other than this chapter to make a health care decision on
7639 behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict
7640 [~~must~~] shall be resolved as expeditiously as possible. Information relevant to the resolution of
7641 the conflict may be obtained from the appropriate procurement organization and any other
7642 person authorized to make an anatomical gift for the prospective donor under Section
7643 26-28-109. Before resolution of the conflict, measures necessary to ensure the medical
7644 suitability of the part may not be withheld or withdrawn from the prospective donor if
7645 withholding or withdrawing the measures is not contraindicated by appropriate end of life care.
7646 Section 194. Section **26-28-124** is amended to read:
7647 **26-28-124. Uniformity of application and construction.**
7648 In applying and construing this uniform act, consideration [~~must~~] shall be given to the
7649 need to promote uniformity of the law with respect to its subject matter among states that enact
7650 it.
7651 Section 195. Section **26-31-1** is amended to read:
7652 **26-31-1. Procurement and use of blood, plasma, products, and derivatives a**
7653 **service and not a sale.**

7654 The procurement, processing, distribution, or use of whole human blood, plasma, blood
7655 products, and blood derivatives for the purpose of injecting or transfusing them into the human
7656 body together with the process of injecting or transfusing the same shall be construed to be the
7657 rendition of a service by every person participating therein and [~~shall not~~] may not be construed
7658 to be a sale.
7659 Section 196. Section **26-33a-104** is amended to read:
7660 **26-33a-104. Purpose, powers, and duties of the committee.**
7661 (1) The purpose of the committee is to direct a statewide effort to collect, analyze, and
7662 distribute health care data to facilitate the promotion and accessibility of quality and
7663 cost-effective health care and also to facilitate interaction among those with concern for health
7664 care issues.
7665 (2) The committee shall:
7666 (a) develop and adopt by rule, following public hearing and comment, a health data
7667 plan that shall among its elements:
7668 (i) identify the key health care issues, questions, and problems amenable to resolution
7669 or improvement through better data, more extensive or careful analysis, or improved
7670 dissemination of health data;
7671 (ii) document existing health data activities in the state to collect, organize, or make
7672 available types of data pertinent to the needs identified in Subsection (2)(a)(i);
7673 (iii) describe and prioritize the actions suitable for the committee to take in response to
7674 the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of
7675 needed data, and to encourage improvements in existing data collection, interpretation, and
7676 reporting activities, and indicate how those actions relate to the activities identified under
7677 Subsection (2)(a)(ii);
7678 (iv) detail the types of data needed for the committee's work, the intended data
7679 suppliers, and the form in which such data are to be supplied, noting the consideration given to
7680 the potential alternative sources and forms of such data and to the estimated cost to the
7681 individual suppliers as well as to the department of acquiring these data in the proposed
7682 manner; the plan shall reasonably demonstrate that the committee has attempted to maximize
7683 cost-effectiveness in the data acquisition approaches selected;
7684 (v) describe the types and methods of validation to be performed to assure data validity

7685 and reliability;
7686 (vi) explain the intended uses of and expected benefits to be derived from the data
7687 specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis
7688 methods; the benefits described [~~must~~] shall demonstrably relate to one or more of the
7689 following:
7690 (A) promoting quality health care[~~,~~];
7691 (B) managing health care costs[~~,~~]; or
7692 (C) improving access to health care services;
7693 (vii) describe the expected processes for interpretation and analysis of the data flowing
7694 to the committee; noting specifically the types of expertise and participation to be sought in
7695 those processes; and
7696 (viii) describe the types of reports to be made available by the committee and the
7697 intended audiences and uses;
7698 (b) have the authority to collect, validate, analyze, and present health data in
7699 accordance with the plan while protecting individual privacy through the use of a control
7700 number as the health data identifier;
7701 (c) evaluate existing identification coding methods and, if necessary, require by rule
7702 that health data suppliers use a uniform system for identification of patients, health care
7703 facilities, and health care providers on health data they submit under this chapter;
7704 (d) report biennially to the governor and the Legislature on how the committee is
7705 meeting its responsibilities under this chapter; and
7706 (e) advise, consult, contract, and cooperate with any corporation, association, or other
7707 entity for the collection, analysis, processing, or reporting of health data identified by control
7708 number only in accordance with the plan.
7709 (3) The committee may adopt rules to carry out the provisions of this chapter in
7710 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
7711 (4) Except for data collection, analysis, and validation functions described in this
7712 section, nothing in this chapter shall be construed to authorize or permit the committee to
7713 perform regulatory functions which are delegated by law to other agencies of the state or
7714 federal governments or to perform quality assurance or medical record audit functions that
7715 health care facilities, health care providers, or third party payors are required to conduct to

7716 comply with federal or state law. The committee [~~shall not~~] may not recommend or determine
7717 whether a health care provider, health care facility, third party payor, or self-funded employer is
7718 in compliance with federal or state laws including [~~but not limited to~~] federal or state licensure,
7719 insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.
7720 (5) Nothing in this chapter shall be construed to require a data supplier to supply health
7721 data identifying a patient by name or describing detail on a patient beyond that needed to
7722 achieve the approved purposes included in the plan.
7723 (6) No request for health data shall be made of health care providers and other data
7724 suppliers until a plan for the use of such health data has been adopted.
7725 (7) If a proposed request for health data imposes unreasonable costs on a data supplier,
7726 due consideration shall be given by the committee to altering the request. If the request is not
7727 altered, the committee shall pay the costs incurred by the data supplier associated with
7728 satisfying the request that are demonstrated by the data supplier to be unreasonable.
7729 (8) After a plan is adopted as provided in Section 26-33a-106.1, the committee may
7730 require any data supplier to submit fee schedules, maximum allowable costs, area prevailing
7731 costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other
7732 specific arrangements for reimbursement to a health care provider.
7733 (9) The committee [~~shall not~~] may not publish any health data collected under
7734 Subsection (8) [~~which~~] that would disclose specific terms of contracts, discounts, or fixed
7735 reimbursement arrangements, or other specific reimbursement arrangements between an
7736 individual provider and a specific payer.
7737 (10) Nothing in Subsection (8) shall prevent the committee from requiring the
7738 submission of health data on the reimbursements actually made to health care providers from
7739 any source of payment, including consumers.
7740 Section 197. Section **26-33a-106.5** is amended to read:
7741 **26-33a-106.5. Comparative analyses.**
7742 (1) The committee may publish compilations or reports that compare and identify
7743 health care providers or data suppliers from the data it collects under this chapter or from any
7744 other source.
7745 (2) (a) The committee shall publish compilations or reports from the data it collects
7746 under this chapter or from any other source which:

7747 (i) contain the information described in Subsection (2)(b); and
7748 (ii) compare and identify by name at least a majority of the health care facilities and
7749 institutions in the state.
7750 (b) The report required by this Subsection (2) shall:
7751 (i) be published at least annually; and
7752 (ii) contain comparisons based on at least the following factors:
7753 (A) nationally recognized quality standards;
7754 (B) charges; and
7755 (C) nationally recognized patient safety standards.
7756 (3) The committee may contract with a private, independent analyst to evaluate the
7757 standard comparative reports of the committee that identify, compare, or rank the performance
7758 of data suppliers by name. The evaluation shall include a validation of statistical
7759 methodologies, limitations, appropriateness of use, and comparisons using standard health
7760 services research practice. The analyst [~~must~~] shall be experienced in analyzing large
7761 databases from multiple data suppliers and in evaluating health care issues of cost, quality, and
7762 access. The results of the analyst's evaluation [~~must~~] shall be released to the public before the
7763 standard comparative analysis upon which it is based may be published by the committee.
7764 (4) The committee shall adopt by rule a timetable for the collection and analysis of data
7765 from multiple types of data suppliers.
7766 (5) The comparative analysis required under Subsection (2) shall be available free of
7767 charge and easily accessible to the public.
7768 Section 198. Section **26-33a-111** is amended to read:
7769 **26-33a-111. Health data not subject to subpoena or compulsory process --**
7770 **Exception.**
7771 Identifiable health data obtained in the course of activities undertaken or supported
7772 under this chapter [~~shall not be~~] are not subject to subpoena or similar compulsory process in
7773 any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual
7774 or organization with lawful access to identifiable health data under the provisions of this
7775 chapter be compelled to testify with regard to such health data, except that data pertaining to a
7776 party in litigation may be subject to subpoena or similar compulsory process in an action
7777 brought by or on behalf of such individual to enforce any liability arising under this chapter.

7778 Section 199. Section **26-34-2** is amended to read:
7779 **26-34-2. Definition of death -- Determination of death.**
7780 (1) An individual is dead if the individual has sustained either:
7781 (a) irreversible cessation of circulatory and respiratory functions; or
7782 (b) irreversible cessation of all functions of the entire brain, including the brain stem.
7783 (2) A determination of death [~~must~~] shall be made in accordance with accepted medical
7784 standards.
7785 Section 200. Section **26-35a-107** is amended to read:
7786 **26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.**
7787 If federal law or regulation prohibits the money in the Nursing Care Facilities Account
7788 from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to
7789 nursing care facilities for providing services pursuant to the Medicaid program [~~must~~] shall be
7790 changed as follows:
7791 (1) except as otherwise provided in Subsection (2), to the rates paid to nursing care
7792 facilities on June 30, 2004; or
7793 (2) if the Legislature or the department has on or after July 1, 2004, changed the rates
7794 paid to facilities through a manner other than the use of expenditures from the Nursing Care
7795 Facilities Account, to the rates provided for by the Legislature or the department.
7796 Section 201. Section **26-36a-102** is amended to read:
7797 **26-36a-102. Legislative findings.**
7798 (1) The Legislature finds that there is an important state purpose to improve the access
7799 of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state
7800 revenues and increases in enrollment under the Utah Medicaid program.
7801 (2) The Legislature finds that in order to improve this access to those persons described
7802 in Subsection (1):
7803 (a) the rates paid to Utah hospitals [~~must~~] shall be adequate to encourage and support
7804 improved access; and
7805 (b) adequate funding [~~must~~] shall be provided to increase the rates paid to Utah
7806 hospitals providing services pursuant to the Utah Medicaid program.
7807 Section 202. Section **26-36a-203** is amended to read:
7808 **26-36a-203. Calculation of assessment.**

7809 (1) The division shall calculate the inpatient upper payment limit gap for hospitals for
7810 each state fiscal year.
7811 (2) (a) An annual assessment is payable on a quarterly basis for each hospital in an
7812 amount calculated at a uniform assessment rate for each hospital discharge, in accordance with
7813 this section.
7814 (b) The uniform assessment rate shall be determined using the total number of hospital
7815 discharges for assessed hospitals divided into the total non-federal portion of the upper
7816 payment limit gap.
7817 (c) Any quarterly changes to the uniform assessment rate [~~must~~] shall be applied
7818 uniformly to all assessed hospitals.
7819 (d) (i) Except as provided in Subsection (2)(d)(ii), the annual uniform assessment rate
7820 may not generate more than the non-federal share of the annual upper payment limit gap for the
7821 fiscal year.
7822 (ii) (A) For fiscal year 2010 the assessment may not generate more than the non-federal
7823 share of the annual upper payment limit gap for the fiscal year.
7824 (B) For fiscal year 2010-11 the department may generate an additional amount from
7825 the assessment imposed under Subsection (2)(d)(i) in the amount of $2,000,000 which shall be
7826 used by the department and the division as follows:
7827 (I) $1,000,000 to offset Medicaid mandatory expenditures; and
7828 (II) $1,000,000 to offset the reduction in hospital outpatient fees in the state program.
7829 (C) For fiscal years 2011-12 and 2012-13 the department may generate an additional
7830 amount from the assessment imposed under Subsection (2)(d)(i) in the amount of $1,000,000
7831 to offset Medicaid mandatory expenditures.
7832 (3) (a) For state fiscal years 2010 and 2011, discharges shall be determined using the
7833 data from each hospital's Medicare Cost Report contained in the Centers for Medicare and
7834 Medicaid Services' Healthcare Cost Report Information System file as of April 1, 2009 for
7835 hospital fiscal years ending between October 1, 2007, and September 30, 2008.
7836 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for
7837 Medicare and Medicaid Services' Healthcare Cost Report Information System file dated March
7838 31, 2009:
7839 (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost

7840 Report with a fiscal year end between October 1, 2007, and September 30, 2008; and
7841 (ii) the division shall determine the hospital's discharges from the information
7842 submitted under Subsection (3)(b)(i).
7843 (c) If a hospital started operations after the due date for a 2007 Medicare Cost Report:
7844 (i) the hospital shall submit to the division a copy of the hospital's most recent
7845 complete year Medicare Cost Report; and
7846 (ii) the division shall determine the hospital's discharges from the information
7847 submitted under Subsection (3)(c)(i).
7848 (d) If a hospital is not certified by the Medicare program and is not required to file a
7849 Medicare Cost Report:
7850 (i) the hospital shall submit to the division its applicable fiscal year discharges with
7851 supporting documentation;
7852 (ii) the division shall determine the hospital's discharges from the information
7853 submitted under Subsection (3)(d)(i); and
7854 (iii) the failure to submit discharge information under Subsections (3)(d)(i) and (ii)
7855 shall result in an audit of the hospital's records by the department and the imposition of a
7856 penalty equal to 5% of the calculated assessment.
7857 (4) (a) For state fiscal year 2012 and 2013, discharges shall be determined using the
7858 data from each hospital's Medicare Cost Report contained in the Centers for Medicare and
7859 Medicaid Services' Healthcare Cost Report Information System file as of:
7860 (i) for state fiscal year 2012, September 30, 2010, for hospital fiscal years ending
7861 between October 1, 2008, and September 30, 2009; and
7862 (ii) for state fiscal year 2013, September 30, 2011, for hospital fiscal years ending
7863 between October 1, 2009, and September 30, 2010.
7864 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for
7865 Medicare and Medicaid Services' Healthcare Cost Report Information System file:
7866 (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost
7867 Report applicable to the assessment year; and
7868 (ii) the division shall determine the hospital's discharges.
7869 (c) If a hospital is not certified by the Medicare program and is not required to file a
7870 Medicare Cost Report:

7871 (i) the hospital shall submit to the division its applicable fiscal year discharges with
7872 supporting documentation;
7873 (ii) the division shall determine the hospital's discharges from the information
7874 submitted under Subsection (4)(c)(i); and
7875 (iii) the failure to submit discharge information shall result in an audit of the hospital's
7876 records and a penalty equal to 5% of the calculated assessment.
7877 (5) Except as provided in Subsection (6), if a hospital is owned by an organization that
7878 owns more than one hospital in the state:
7879 (a) the assessment for each hospital shall be separately calculated by the department;
7880 and
7881 (b) each separate hospital shall pay the assessment imposed by this chapter.
7882 (6) Notwithstanding the requirement of Subsection (5), if multiple hospitals use the
7883 same Medicaid provider number:
7884 (a) the department shall calculate the assessment in the aggregate for the hospitals
7885 using the same Medicaid provider number; and
7886 (b) the hospitals may pay the assessment in the aggregate.
7887 (7) (a) The assessment formula imposed by this section, and the inpatient access
7888 payments under Section 26-36a-205, shall be adjusted in accordance with Subsection (7)(b) if a
7889 hospital, for any reason, does not meet the definition of a hospital subject to the assessment
7890 under Section 26-36a-103 for the entire fiscal year.
7891 (b) The department shall adjust the assessment payable to the department under this
7892 chapter for a hospital that is not subject to the assessment for an entire fiscal year by
7893 multiplying the annual assessment calculated under Subsection (3) or (4) by a fraction, the
7894 numerator of which is the number of days during the year that the hospital operated, and the
7895 denominator of which is 365.
7896 (c) A hospital described in Subsection (7)(a):
7897 (i) that is ceasing to operate in the state, shall pay any assessment owed to the
7898 department immediately upon ceasing to operate in the state; and
7899 (ii) shall receive Medicaid inpatient hospital access payments under Section
7900 26-36a-205 for the state fiscal year, adjusted using the same formula described in Subsection
7901 (7)(b).

7902 (8) A hospital that is subject to payment of the assessment at the beginning of a state
7903 fiscal year, but during the state fiscal year experiences a change in status so that it no longer
7904 falls under the definition of a hospital subject to the assessment in Section 26-36a-204, shall:
7905 (a) not be required to pay the hospital assessment beginning on the date established by
7906 the department by administrative rule; and
7907 (b) not be entitled to Medicaid inpatient hospital access payments under Section
7908 26-36a-205 on the date established by the department by administrative rule.
7909 Section 203. Section **26-40-110** is amended to read:
7910 **26-40-110. Managed care -- Contracting for services.**
7911 (1) Program benefits provided to enrollees under the program, as described in Section
7912 26-40-106, shall be delivered in a managed care system if the department determines that
7913 adequate services are available where the enrollee lives or resides.
7914 (2) (a) The department shall use the following criteria to evaluate bids from health
7915 plans:
7916 (i) ability to manage medical expenses, including mental health costs;
7917 (ii) proven ability to handle accident and health insurance;
7918 (iii) efficiency of claim paying procedures;
7919 (iv) proven ability for managed care and quality assurance;
7920 (v) provider contracting and discounts;
7921 (vi) pharmacy benefit management;
7922 (vii) an estimate of total charges for administering the pool;
7923 (viii) ability to administer the pool in a cost-efficient manner;
7924 (ix) the ability to provide adequate providers and services in the state; and
7925 (x) other criteria established by the department.
7926 (b) The dental benefits required by Section 26-40-106 may be bid out separately from
7927 other program benefits.
7928 (c) Except for dental benefits, the department shall request bids for the program's
7929 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.
7930 The department shall request bids for the program's benefits at least once every five years
7931 thereafter.
7932 (d) The department's contract with health plans for the program's benefits shall include

7933 risk sharing provisions in which the health plan [~~must~~] shall accept at least 75% of the risk for
7934 any difference between the department's premium payments per client and actual medical
7935 expenditures.
7936 (3) The executive director shall report to and seek recommendations from the Health
7937 Advisory Council created in Section 26-1-7.5:
7938 (a) if the division receives less than two bids or proposals under this section that are
7939 acceptable to the division or responsive to the bid; and
7940 (b) before awarding a contract to a managed care system.
7941 (4) (a) The department shall award contracts to responsive bidders if the department
7942 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).
7943 (b) The department may contract with the Group Insurance Division within the Utah
7944 State Retirement Office to provide services under Subsection (1) if:
7945 (i) the executive director seeks the recommendation of the Health Advisory Council
7946 under Subsection (3); and
7947 (ii) the executive director determines that the bids were not acceptable to the
7948 department.
7949 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)
7950 is not subject to the risk sharing required by Subsection (2)(d).
7951 (5) Title 63G, Chapter 6, Utah Procurement Code, shall apply to this section.
7952 Section 204. Section **26-41-104** is amended to read:
7953 **26-41-104. Training in use of epinephrine auto-injector.**
7954 (1) (a) Each primary and secondary school in the state, both public and private, shall
7955 make initial and annual refresher training, regarding the storage and emergency use of an
7956 epinephrine auto-injector, available to any teacher or other school employee who volunteers to
7957 become a qualified adult.
7958 (b) The training described in Subsection (1)(a) may be provided by the school nurse, or
7959 other person qualified to provide such training, designated by the school district physician, the
7960 medical director of the local health department, or the local emergency medical services
7961 director.
7962 (2) A person who provides training under Subsection (1) or (6) shall include in the
7963 training:

7964 (a) techniques for recognizing symptoms of anaphylaxis;
7965 (b) standards and procedures for the storage and emergency use of epinephrine
7966 auto-injectors;
7967 (c) emergency follow-up procedures, including calling the emergency 911 number and
7968 contacting, if possible, the student's parent and physician; and
7969 (d) written materials covering the information required under this Subsection (2).
7970 (3) A qualified adult shall retain for reference the written materials prepared in
7971 accordance with Subsection (2)(d).
7972 (4) A public school shall permit a student to possess an epinephrine auto-injector or
7973 possess and self-administer an epinephrine auto-injector if:
7974 (a) the student's parent or guardian signs a statement:
7975 (i) authorizing the student to possess or possess and self-administer an epinephrine
7976 auto-injector; and
7977 (ii) acknowledging that the student is responsible for, and capable of, possessing or
7978 possessing and self-administering an epinephrine auto-injector; and
7979 (b) the student's health care provider provides a written statement that states that:
7980 (i) it is medically appropriate for the student to possess or possess and self-administer
7981 an epinephrine auto-injector; and
7982 (ii) the student should be in possession of the epinephrine auto-injector at all times.
7983 (5) The Utah Department of Health, in cooperation with the state superintendent of
7984 public instruction, shall design forms to be used by public schools for the parental and health
7985 care providers statements described in Subsection (6).
7986 (6) (a) The department:
7987 (i) shall approve educational programs conducted by other persons, to train people
7988 under Subsection (6)(b) of this section, regarding the use and storage of emergency epinephrine
7989 auto-injectors; and
7990 (ii) may, as funding is available, conduct educational programs to train people
7991 regarding the use of and storage of emergency epinephrine auto-injectors.
7992 (b) A person who volunteers to receive training to administer an epinephrine
7993 auto-injector under the provisions of this Subsection (6) [~~must~~] shall demonstrate a need for the
7994 training to the department, which may be based upon occupational, volunteer, or family

7995 circumstances, and shall include:
7996 (i) camp counselors;
7997 (ii) scout leaders;
7998 (iii) forest rangers;
7999 (iv) tour guides; and
8000 (v) other persons who have or reasonably expect to have responsibility for at least one
8001 other person as a result of the person's occupational or volunteer status.
8002 (7) The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah
8003 Administrative Rulemaking Act, to:
8004 (a) establish and approve training programs in accordance with this section; and
8005 (b) establish a procedure for determining the need for training under Subsection
8006 (6)(b)(v).
8007 Section 205. Section **26-47-103** is amended to read:
8008 **26-47-103. Department to award grants for assistance to persons with bleeding**
8009 **disorders.**
8010 (1) For purposes of this section:
8011 (a) "Hemophilia services" means a program for medical care, including the costs of
8012 blood transfusions, and the use of blood derivatives and blood clotting factors.
8013 (b) "Person with a bleeding disorder" means a person:
8014 (i) who is medically diagnosed with hemophilia or a bleeding disorder;
8015 (ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and
8016 (iii) who has either:
8017 (A) insurance coverage that excludes coverage for hemophilia services;
8018 (B) exceeded the person's insurance plan's annual maximum benefits;
8019 (C) exceeded the person's annual or lifetime maximum benefits payable under Title
8020 31A, Chapter 29, Comprehensive Health Insurance Pool Act; or
8021 (D) insurance coverage available under either private health insurance, Title 31A,
8022 Chapter 29, Comprehensive Health Insurance Pool Act, Utah mini COBRA coverage under
8023 Section 31A-22-722, or federal COBRA coverage, but the premiums for that coverage are
8024 greater than a percentage of the person's annual adjusted gross income as established by the
8025 department by administrative rule.

8026 (2) (a) Within appropriations specified by the Legislature for this purpose, the
8027 department shall make grants to public and nonprofit entities who assist persons with bleeding
8028 disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for
8029 coverage of hemophilia services.
8030 (b) Applicants for grants under this section:
8031 (i) [~~must~~] shall be submitted to the department in writing; and
8032 (ii) [~~must~~] shall comply with Subsection (3).
8033 (3) Applications for grants under this section shall include:
8034 (a) a statement of specific, measurable objectives, and the methods to be used to assess
8035 the achievement of those objectives;
8036 (b) a description of the personnel responsible for carrying out the activities of the grant
8037 along with a statement justifying the use of any grant funds for the personnel;
8038 (c) letters and other forms of evidence showing that efforts have been made to secure
8039 financial and professional assistance and support for the services to be provided under the
8040 grant;
8041 (d) a list of services to be provided by the applicant;
8042 (e) the schedule of fees to be charged by the applicant; and
8043 (f) other provisions as determined by the department.
8044 (4) The department may accept grants, gifts, and donations of money or property for
8045 use by the grant program.
8046 (5) (a) The department shall establish rules in accordance with Title 63G, Chapter 3,
8047 Utah Administrative Rulemaking Act, governing the application form, process, and criteria it
8048 will use in awarding grants under this section.
8049 (b) The department shall submit an annual report on the implementation of the grant
8050 program:
8051 (i) by no later than November 1; and
8052 (ii) to the Health and Human Services Interim Committee and the Health and Human
8053 Services Appropriations Subcommittee.
8054 Section 206. Section **26-49-202** is amended to read:
8055 **26-49-202. Volunteer health practitioner registration systems.**
8056 (1) To qualify as a volunteer health practitioner registration system, the registration

8057 system [~~must~~] shall:
8058 (a) accept applications for the registration of volunteer health practitioners before or
8059 during an emergency;
8060 (b) include information about the licensure and good standing of health practitioners
8061 that is accessible by authorized persons;
8062 (c) be capable of confirming the accuracy of information concerning whether a health
8063 practitioner is licensed and in good standing before health services or veterinary services are
8064 provided under this chapter; and
8065 (d) meet one of the following conditions:
8066 (i) be an emergency system for advance registration of volunteer health practitioners
8067 established by a state and funded through the United States Department of Health and Human
8068 Services under Section 319I of the Public Health Services Act, 42 U.S.C. Sec. 247d-7b, as
8069 amended;
8070 (ii) be a local unit consisting of trained and equipped emergency response, public
8071 health, and medical personnel formed under Section 2801 of the Public Health Services Act, 42
8072 U.S.C. Sec. 300hh as amended;
8073 (iii) be operated by a:
8074 (A) disaster relief organization;
8075 (B) licensing board;
8076 (C) national or regional association of licensing boards or health practitioners;
8077 (D) health facility that provides comprehensive inpatient and outpatient healthcare
8078 services, including tertiary care; or
8079 (E) governmental entity; or
8080 (iv) be designated by the Department of Health as a registration system for purposes of
8081 this chapter.
8082 (2) (a) Subject to Subsection (2)(b), while an emergency declaration is in effect, the
8083 Department of Health, a person authorized to act on behalf of the Department of Health, or a
8084 host entity shall confirm whether a volunteer health practitioner in Utah is registered with a
8085 registration system that complies with Subsection (1).
8086 (b) The confirmation authorized under this Subsection (2) is limited to obtaining the
8087 identity of the practitioner from the system and determining whether the system indicates that

8088 the practitioner is licensed and in good standing.
8089 (3) Upon request of a person authorized under Subsection (2), or a similarly authorized
8090 person in another state, a registration system located in Utah shall notify the person of the
8091 identity of a volunteer health practitioner and whether or not the volunteer health practitioner is
8092 licensed and in good standing.
8093 (4) A host entity is not required to use the services of a volunteer health practitioner
8094 even if the volunteer health practitioner is registered with a registration system that indicates
8095 that the practitioner is licensed and in good standing.
8096 Section 207. Section **26-49-701** is amended to read:
8097 **26-49-701. Uniformity of application and construction.**
8098 In applying and construing this chapter, consideration [~~must~~] shall be given to the need
8099 to promote uniformity of the law with respect to its subject matter among states that enact it.
8100 Section 208. Section **26A-1-112** is amended to read:
8101 **26A-1-112. Appointment of personnel.**
8102 (1) All local health department personnel shall be hired by the local health officer or
8103 [~~his~~] the local health officer's designee in accordance with the merit system, personnel policies,
8104 and compensation plans approved by the board and ratified pursuant to Subsection (2). The
8105 personnel shall have qualifications for their positions equivalent to those approved for
8106 comparable positions in the Departments of Health and Environmental Quality.
8107 (2) The merit system, personnel policies, and compensation plans approved under
8108 Subsection (1) [~~must~~] shall be ratified by all the counties participating in the local health
8109 department.
8110 (3) Subject to the local merit system, employees of the local health department may be
8111 removed by the local health officer for cause. A hearing shall be granted if requested by the
8112 employee.
8113 Section 209. Section **26A-1-126** is amended to read:
8114 **26A-1-126. Medical reserve corps.**
8115 (1) In addition to the duties listed in Section 26A-1-114, a local health department may
8116 establish a medical reserve corps in accordance with this section.
8117 (2) The purpose of a medical reserve corps is to enable a local health authority to
8118 respond with appropriate health care professionals to a national, state, or local emergency, a

8119 public health emergency as defined in Section 26-23b-102, or a declaration by the president of
8120 the United States or other federal official requesting public health related activities.
8121 (3) When an emergency has been declared in accordance with Subsection (2), a local
8122 health department may activate a medical reserve corps for the duration of the emergency.
8123 (4) For purposes of this section, a medical reserve corps may include persons who:
8124 (a) are licensed under Title 58, Occupations and Professions, and who are operating
8125 within the scope of their practice;
8126 (b) are exempt from licensure, or operating under modified scope of practice
8127 provisions in accordance with Subsections 58-1-307(4) and (5); and
8128 (c) within the 10 years preceding the declared emergency, held a valid license, in good
8129 standing in Utah, for one of the occupations described in Subsection 58-13-2(1), but the license
8130 is not currently active.
8131 (5) (a) Notwithstanding the provisions of Subsections 58-1-307(4)(a) and (5)(b) the
8132 local health department may authorize a person described in Subsection (4) to operate in a
8133 modified scope of practice as necessary to respond to the declared emergency.
8134 (b) A person operating as a member of an activated medical reserve corps under this
8135 section:
8136 (i) [~~must~~] shall be volunteering for and supervised by the local health department;
8137 (ii) [~~must~~] shall comply with the provisions of this section;
8138 (iii) is exempt from the licensing laws of Title 58, Occupations and Professions; and
8139 (iv) [~~must~~] shall carry a certificate issued by the local health department which
8140 designates the individual as a member of the medical reserve corps during the duration of the
8141 emergency.
8142 (6) The local department of health may access the Division of Occupational and
8143 Professional Licensing database for the purpose of determining if a person's current or expired
8144 license to practice in the state was in good standing.
8145 (7) The local department of health shall maintain a registry of persons who are
8146 members of a medical reserve corps. The registry of the medical reserve corps shall be made
8147 available to the public and to the Division of Occupational and Professional Licensing.
8148 Section 210. Section **29-1-2** is amended to read:
8149 **29-1-2. Property worth more than $250 -- Limitation of liability -- Special**

8150 **arrangements -- Theft by, or negligence of, innkeeper or servant.**
8151 An innkeeper, hotel keeper, boarding house or lodging house keeper [~~shall not be~~
8152 ~~obliged~~] is not required to receive from a guest for deposit in such safe or vault, property
8153 described in the next preceding section exceeding a total value of $250, and [~~shall not be~~] is
8154 not liable for such property exceeding such value whether received or not. Such innkeeper,
8155 hotel keeper, boarding house or lodging house keeper, by special arrangement with a guest,
8156 may receive for deposit in such safe or vault property upon such written terms as may be
8157 agreed upon. [~~An~~] A person who is an innkeeper, hotel keeper, boarding house or lodging
8158 house keeper shall be liable for a loss of any of such property of a guest in [~~his~~] the person's inn
8159 caused by the theft or negligence of the innkeeper or [~~his~~] the innkeeper's servant.
8160 Section 211. Section **29-1-3** is amended to read:
8161 **29-1-3. Other personal property -- Limitation of liability.**
8162 (1) The liability of a person who is an innkeeper, hotel keeper, boarding or lodging
8163 house keeper, for loss of or injury to personal property placed in [~~his care by his~~] the person's
8164 care by the person's guests other than that described in Section 29-1-1, shall be that of a
8165 depositary for hire. [~~Such liability shall not~~]
8166 (2) The liability described in Subsection (1) may not exceed $150 for each trunk and its
8167 contents, $50 for each valise, suitcase or other piece of hand luggage and its contents, and $10
8168 for each box, bundle or package, and its contents, so placed in [~~his~~] the person's care, unless
8169 [~~he~~] the person has consented in writing with [~~such~~] the guest to assume a greater liability.
8170 Section 212. Section **30-1-4.5** is amended to read:
8171 **30-1-4.5. Validity of marriage not solemnized.**
8172 (1) A marriage which is not solemnized according to this chapter shall be legal and
8173 valid if a court or administrative order establishes that it arises out of a contract between a man
8174 and a woman who:
8175 (a) are of legal age and capable of giving consent;
8176 (b) are legally capable of entering a solemnized marriage under the provisions of this
8177 chapter;
8178 (c) have cohabited;
8179 (d) mutually assume marital rights, duties, and obligations; and
8180 (e) who hold themselves out as and have acquired a uniform and general reputation as

8181 husband and wife.
8182 (2) The determination or establishment of a marriage under this section [~~must~~] shall
8183 occur during the relationship described in Subsection (1), or within one year following the
8184 termination of that relationship. Evidence of a marriage recognizable under this section may be
8185 manifested in any form, and may be proved under the same general rules of evidence as facts in
8186 other cases.
8187 Section 213. Section **30-1-5** is amended to read:
8188 **30-1-5. Marriage solemnization -- Before unauthorized person -- Validity.**
8189 (1) A marriage solemnized before a person professing to have authority to perform
8190 marriages [~~shall not~~] may not be invalidated for lack of authority, if consummated in the belief
8191 of the parties or either of them that [~~he~~] the person had authority and that they have been
8192 lawfully married.
8193 (2) This section may not be construed to validate a marriage that is prohibited or void
8194 under Section 30-1-2.
8195 Section 214. Section **30-1-10** is amended to read:
8196 **30-1-10. Application by persons unknown to clerk -- Affidavit -- Penalty.**
8197 (1) When the parties are personally unknown to the clerk a license [~~shall not issue~~]
8198 may not be issued until an affidavit is made before [~~him~~] the clerk, which shall be filed and
8199 preserved by [~~him~~] the clerk, by a party applying for [~~such~~] the license, showing that there is no
8200 lawful reason in the way of [~~such~~] the marriage. [~~The party making such affidavit or any~~
8201 ~~subscribing witness, if he falsely swears therein, is guilty of perjury.~~]
8202 (2) A party who makes an affidavit described in Subsection (1) or a subscribing
8203 witness to the affidavit who falsely swears in the affidavit is guilty of perjury.
8204 Section 215. Section **30-1-32** is amended to read:
8205 **30-1-32. Master plan for counseling.**
8206 (1) It shall be the function and duty of the premarital counseling board, after holding
8207 public hearings, to make, adopt, and certify to the county legislative body a master plan for
8208 premarital counseling of marriage license applicants within the purposes and objectives of this
8209 act.
8210 (2) The master plan [~~shall include, but not be limited to,~~] described in Subsection (1)
8211 shall include:

8212 (a) counseling procedures [~~which~~] that:
8213 (i) will make applicants aware of problem areas in their proposed marriage [~~and~~];
8214 (ii) suggest ways of meeting problems [~~and which~~]; and
8215 (iii) will induce reconsideration or postponement [~~where~~] when:
8216 (A) the applicants are not sufficiently matured or are not financially capable of meeting
8217 the responsibilities of marriage; or
8218 (B) are marrying for reasons not conducive to a sound lasting marriage[~~. The plan shall~~
8219 ~~include~~]; and
8220 (b) standards for evaluating premarital counseling received by the applicants, prior to
8221 their application for a marriage license, which would justify issuance of certificate without
8222 further counseling being given or required.
8223 (3) The board may, from time to time, amend or extend the plan described in
8224 Subsection (1).
8225 (4) The premarital counseling board may, subject to Subsection (5):
8226 (a) appoint a staff and employees as may be necessary for its work; and [~~may~~]
8227 (b) contract with social service agencies or other consultants within the county or
8228 counties for services it requires[~~, providing, its expenditures shall not~~].
8229 (5) Expenditures for the appointments and contracts described in Subsection (4) may
8230 not exceed the sums appropriated by the county legislative body plus sums placed at its
8231 disposal through gift or otherwise.
8232 Section 216. Section **30-1-33** is amended to read:
8233 **30-1-33. Conformity to master plan for counseling as prerequisite to marriage**
8234 **license -- Exceptions.**
8235 Whenever the board of commissioners of a county has adopted a master plan for
8236 premarital counseling no resident of the county may obtain a marriage license without
8237 conforming to the plan, except that:
8238 (1) Any person who applies for a marriage license shall have the right to secure the
8239 license and to marry notwithstanding their failure to conform to the required premarital
8240 counseling or their failure to obtain a certificate of authorization from the premarital counseling
8241 board if they wait six months from the date of application for issuance of the license.
8242 (2) This [~~act shall not~~] chapter does not apply to any application for a marriage license

8243 where both parties are at least 19 years of age and neither has been previously divorced.
8244 (3) This [~~act shall not~~] chapter does not apply to any application for a marriage license
8245 unless both applicants have physically resided in [~~the state of~~] Utah for 60 days immediately
8246 preceding their application.
8247 (4) Premarital counseling required by this act shall be [~~deemed~~] considered fulfilled if
8248 the applicants present a certificate verified by a clergyman that the applicants have completed a
8249 course of premarital counseling approved by [~~his~~] a church and given by or under the
8250 supervision of the clergyman.
8251 Section 217. Section **30-1-35** is amended to read:
8252 **30-1-35. Persons performing counseling services designated by board --**
8253 **Exemption from license requirements.**
8254 For the purposes of this [~~act~~] chapter the premarital counseling board of each county or
8255 combination of counties may determine those persons who are to perform any services under
8256 this [~~act~~] chapter and any person so acting [~~shall not be~~] is not subject to prosecution or other
8257 sanctions for [~~his~~] the person's failure to hold any license for these services as may be required
8258 by the laws of the state [~~of Utah~~].
8259 Section 218. Section **30-1-37** is amended to read:
8260 **30-1-37. Confidentiality of information obtained under counseling provisions.**
8261 Except for the information required or to be required on the marriage license
8262 application form, any information given by a marriage license applicant in compliance with this
8263 [~~act~~] chapter shall be confidential information and [~~shall not~~] may not be released by any
8264 person, board, commission, or other entity. However, the premarital counseling board or board
8265 of commissioners may use the information, without identification of individuals, to compile
8266 and release statistical data.
8267 Section 219. Section **30-2-7** is amended to read:
8268 **30-2-7. Husband's liability for wife's torts.**
8269 For civil injuries committed by a married woman damages may be recovered from her
8270 alone, and her husband [~~shall not~~] may not be held liable [~~therefor~~] for those civil injuries,
8271 except in cases where he would be jointly liable with her if the marriage did not exist.
8272 Section 220. Section **30-3-16.7** is amended to read:
8273 **30-3-16.7. Effect of petition -- Pendency of action.**

8274 (1) The filing of a petition for conciliation under this act shall, for a period of 60 days
8275 thereafter, act as a bar to the filing by either spouse of an action for divorce, annulment of
8276 marriage or separate maintenance unless the court otherwise orders.
8277 (2) The pendency of an action for divorce, annulment of marriage or separate
8278 maintenance [~~shall not~~] does not prevent either party to the action from filing a petition for
8279 conciliation under this act, either on [~~his~~] the party's own or at the request and direction of the
8280 court as authorized by Section 30-3-17[~~; and the~~].
8281 (3) The filing of a petition for conciliation shall stay for a period of 60 days, unless the
8282 court otherwise orders, any trial or default hearing upon the complaint. [~~However,~~]
8283 (4) Notwithstanding any other provision of this section, when the judge of the family
8284 court division is advised in writing by a marriage counselor to whom a petition for conciliation
8285 has been referred that a reconciliation of the parties cannot be effected, the bar to filing an
8286 action or the stay of trial or default hearing shall be removed.
8287 Section 221. Section **30-3-17** is amended to read:
8288 **30-3-17. Power and jurisdiction of judge.**
8289 (1) The judge of a district court may:
8290 (a) counsel either spouse or both [~~and may in his~~];
8291 (b) in the judge's discretion require one or both [~~of them~~] spouses to appear before
8292 [~~him and,~~] the judge;
8293 (c) in those counties where a domestic relations counselor has been appointed pursuant
8294 to this [~~act~~] chapter, require [~~them~~] the spouses to file a petition for conciliation and to appear
8295 before [~~such~~] the counselor[~~,~~]; or [~~may~~]
8296 (d) recommend the aid of:
8297 (i) a physician, psychiatrist, psychologist, social service worker, or other specialists or
8298 scientific expert[~~,~~]; or
8299 (ii) the pastor, bishop, or presiding officer of any religious denomination to which the
8300 parties may belong.
8301 (2) The power and jurisdiction granted by this [~~act shall be~~] chapter is in addition to,
8302 and not in limitation of, that presently exercised by the district courts [~~and shall not be in~~
8303 ~~limitation thereof~~].
8304 Section 222. Section **30-3-17.1** is amended to read:

8305 **30-3-17.1. Proceedings considered confidential -- Written evaluation by**
8306 **counselor.**
8307 (1) The petition for conciliation and all communications, verbal or written, from the
8308 parties to the domestic relations counselors or other personnel of the conciliation department in
8309 counseling or conciliation proceedings shall be [~~deemed~~] considered to be made in official
8310 confidence within the meaning of Section 78B-1-137 and [~~shall not be~~] is not admissible or
8311 usable for any purpose in any divorce hearing or other proceeding. [~~However,~~]
8312 (2) Notwithstanding Subsection (1), the marriage counselor may submit to the
8313 appropriate court a written evaluation of the prospects or prognosis of a particular marriage
8314 without divulging facts or revealing confidential disclosures.
8315 Section 223. Section **30-3-18** is amended to read:
8316 **30-3-18. Waiting period for hearing after filing for divorce -- Exemption -- Use of**
8317 **counseling and education services not to be construed as condonation or promotion.**
8318 (1) Unless the court, for good cause shown and set forth in the findings, otherwise
8319 orders, no hearing for decree of divorce shall be held by the court until 90 days shall have
8320 elapsed from the filing of the complaint, [~~provided~~] but the court may make [~~such~~] interim
8321 orders as may be just and equitable.
8322 (2) The 90-day period as provided in Subsection (1) [~~shall not~~] does not apply in any
8323 case where both parties have completed the mandatory educational course for divorcing parents
8324 as provided in Section 30-3-11.3.
8325 (3) The use of counseling, mediation, and education services provided under this
8326 chapter may not be construed as condoning the acts that may constitute grounds for divorce on
8327 the part of either spouse nor of promoting divorce.
8328 Section 224. Section **30-3-33** is amended to read:
8329 **30-3-33. Advisory guidelines.**
8330 In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5,
8331 the following advisory guidelines are suggested to govern all parent-time arrangements
8332 between parents.
8333 (1) Parent-time schedules mutually agreed upon by both parents are preferable to a
8334 court-imposed solution.
8335 (2) The parent-time schedule shall be utilized to maximize the continuity and stability

8336 of the child's life.
8337 (3) Special consideration shall be given by each parent to make the child available to
8338 attend family functions including funerals, weddings, family reunions, religious holidays,
8339 important ceremonies, and other significant events in the life of the child or in the life of either
8340 parent which may inadvertently conflict with the parent-time schedule.
8341 (4) The responsibility for the pick up, delivery, and return of the child shall be
8342 determined by the court when the parent-time order is entered, and may be changed at any time
8343 a subsequent modification is made to the parent-time order.
8344 (5) If the noncustodial parent will be providing transportation, the custodial parent
8345 shall have the child ready for parent-time at the time the child is to be picked up and shall be
8346 present at the custodial home or shall make reasonable alternate arrangements to receive the
8347 child at the time the child is returned.
8348 (6) If the custodial parent will be transporting the child, the noncustodial parent shall
8349 be at the appointed place at the time the noncustodial parent is to receive the child, and have
8350 the child ready to be picked up at the appointed time and place, or have made reasonable
8351 alternate arrangements for the custodial parent to pick up the child.
8352 (7) Regular school hours may not be interrupted for a school-age child for the exercise
8353 of parent-time by either parent.
8354 (8) The court may make alterations in the parent-time schedule to reasonably
8355 accommodate the work schedule of both parents and may increase the parent-time allowed to
8356 the noncustodial parent but [~~shall not~~] may not diminish the standardized parent-time provided
8357 in Sections 30-3-35 and 30-3-35.5.
8358 (9) The court may make alterations in the parent-time schedule to reasonably
8359 accommodate the distance between the parties and the expense of exercising parent-time.
8360 (10) Neither parent-time nor child support is to be withheld due to either parent's
8361 failure to comply with a court-ordered parent-time schedule.
8362 (11) The custodial parent shall notify the noncustodial parent within 24 hours of
8363 receiving notice of all significant school, social, sports, and community functions in which the
8364 child is participating or being honored, and the noncustodial parent shall be entitled to attend
8365 and participate fully.
8366 (12) The noncustodial parent shall have access directly to all school reports including

8367 preschool and daycare reports and medical records and shall be notified immediately by the
8368 custodial parent in the event of a medical emergency.
8369 (13) Each parent shall provide the other with [~~his~~] the parent's current address and
8370 telephone number, email address, and other virtual parent-time access information within 24
8371 hours of any change.
8372 (14) Each parent shall permit and encourage, during reasonable hours, reasonable and
8373 uncensored communications with the child, in the form of mail privileges and virtual
8374 parent-time if the equipment is reasonably available, provided that if the parties cannot agree
8375 on whether the equipment is reasonably available, the court shall decide whether the equipment
8376 for virtual parent-time is reasonably available, taking into consideration:
8377 (a) the best interests of the child;
8378 (b) each parent's ability to handle any additional expenses for virtual parent-time; and
8379 (c) any other factors the court considers material.
8380 (15) Parental care shall be presumed to be better care for the child than surrogate care
8381 and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if
8382 willing and able to transport the children, to provide the child care. Child care arrangements
8383 existing during the marriage are preferred as are child care arrangements with nominal or no
8384 charge.
8385 (16) Each parent shall provide all surrogate care providers with the name, current
8386 address, and telephone number of the other parent and shall provide the noncustodial parent
8387 with the name, current address, and telephone number of all surrogate care providers unless the
8388 court for good cause orders otherwise.
8389 (17) Each parent shall be entitled to an equal division of major religious holidays
8390 celebrated by the parents, and the parent who celebrates a religious holiday that the other parent
8391 does not celebrate shall have the right to be together with the child on the religious holiday.
8392 (18) If the child is on a different parent-time schedule than a sibling, based on Sections
8393 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with
8394 all the minor children so that parent-time is uniform between school aged and nonschool aged
8395 children, is appropriate.
8396 Section 225. Section **30-8-3** is amended to read:
8397 **30-8-3. Writing -- Signature required.**

8398 A premarital agreement [~~must~~] shall be in writing and signed by both parties. It is
8399 enforceable without consideration.
8400 Section 226. Section **31A-2-301** is amended to read:
8401 **31A-2-301. Special hearing officers -- Witness and mileage fees.**
8402 (1) If the commissioner considers it necessary because of the technicality or complexity
8403 of the subject, [~~he~~] the commissioner may appoint a special hearing officer from outside the
8404 department staff and may contract for a reasonable professional fee for the services.
8405 (2) (a) In hearings before the commissioner, witness fees and reimbursement for
8406 mileage traveled, if claimed, shall be allowed at the same rate as in district courts.
8407 (b) Witness fees and reimbursement for mileage, together with the actual expense
8408 necessarily incurred in securing attendance of witnesses and their testimony, and the hearing
8409 officer's fee and reasonable actual expenses, shall be paid by the Insurance Department.
8410 (c) The commissioner shall be reimbursed for these costs as provided in Section
8411 31A-2-205 if:
8412 (i) the hearing is incident to an examination for which costs are payable under Section
8413 31A-2-205; or
8414 (ii) the commissioner orders the persons involved in the hearing to reimburse the
8415 department for hearing costs, which the commissioner may do if [~~he~~] the commissioner had
8416 reasonable cause to believe that the order which issued or might have issued was necessary.
8417 (3) Whenever the commissioner is reimbursed for costs under this section, the
8418 expenditures [~~shall not~~] may not be charged against the department budget.
8419 Section 227. Section **31A-2-302** is amended to read:
8420 **31A-2-302. Commissioner's disapproval.**
8421 (1) When the law requires the commissioner's approval for a certain action without a
8422 deemer clause, that approval [~~must~~] shall be express. The commissioner's disapproval of an
8423 action is assumed if the commissioner does not act within 60 days after receiving the
8424 application for approval or give notice of the commissioner's reasonable extension of that time
8425 period with the commissioner's reasons for the extension. Assumed disapproval under this
8426 subsection entitles the aggrieved person to request agency action under Section 63G-4-201.
8427 (2) When the law provides that a certain action is not effective if disapproved by the
8428 commissioner within a certain period, the affirmative approval by the commissioner may make

8429 the action effective at a designated earlier date, but not earlier than the date of the
8430 commissioner's affirmative approval.
8431 (3) Subsections (1) and (2) do not apply to the extent that the law specifically provides
8432 otherwise.
8433 Section 228. Section **31A-5-208** is amended to read:
8434 **31A-5-208. Deposit of proceeds of subscriptions.**
8435 (1) All funds, and the securities and documents representing interests in property,
8436 received by a stock corporation for stock subscriptions or by a mutual for applications for
8437 insurance policies or for mutual bond or contribution note subscriptions, shall be deposited in
8438 the name of the corporation with a custodian financial institution qualified under Subsection
8439 31A-2-206(1). This deposit is subject to an escrow agreement approved by the commissioner
8440 under which withdrawals may be made only in accordance with conditions specified in the
8441 agreement, and with the commissioner's approval. Securities may be held as authorized in
8442 Subsection 31A-2-206(2) and [~~must~~] are required to be approved by the commissioner.
8443 (2) This section does not apply to stock or mutual insurance corporations already in
8444 existence on July 1, 1986.
8445 Section 229. Section **31A-5-305** is amended to read:
8446 **31A-5-305. Authorized securities.**
8447 (1) (a) The articles of incorporation of a stock corporation may authorize the kind of
8448 shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except
8449 that:
8450 (i) nonvoting common stock may not be issued;
8451 (ii) all classes of common stock [~~must~~] shall have equal voting rights;
8452 (iii) all common stock [~~must~~] shall have a stated par value; and
8453 (iv) except with the commissioner's approval, for two years after the initial issuance of
8454 a certificate of authority, the corporation may issue no shares and no other securities
8455 convertible into shares except a single class of common stock.
8456 (b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or
8457 scrip.
8458 (c) The consideration and payment for shares and certificates representing shares is
8459 governed by Subsection 31A-5-207(1)(a).

8460 (d) The liability of subscribers and shareholders for unpaid subscriptions and the status
8461 of stock is governed by Section 16-10a-622.
8462 (e) A shareholder's preemptive rights is governed by Section 16-10a-630.
8463 (f) Stock corporations may issue bonds and contribution notes on the same basis as
8464 mutuals under Subsections (2)(a) and (b).
8465 (2) (a) The articles of incorporation of a nonassessable mutual may authorize bonds of
8466 one or more classes. The articles of incorporation shall specify the amount of each class of
8467 bonds the corporation is authorized to issue, their designations, preferences, limitations, rates
8468 of interest, relative rights, and other terms, subject to all of the following provisions:
8469 (i) During the first year after the initial issuance of a certificate of authority, the
8470 corporation may issue only a single class of bonds with identical rights.
8471 (ii) After the first year, but within five years after the initial issuance of a certificate of
8472 authority, additional classes of bonds may be authorized after receiving the approval of the
8473 commissioner. The commissioner shall approve the issuance if the commissioner finds that
8474 policyholders and prior bondholders will not be prejudiced.
8475 (iii) The rate of interest shall be fair.
8476 (iv) The bonds shall bear a maturity date not later than 10 years from the date of
8477 issuance, when principal and accrued interest shall be due and payable, subject to Subsection
8478 (2)(d).
8479 (b) A mutual may issue contribution notes with the commissioner's approval. The
8480 contribution notes may be denominated by any name that is not misleading. The contribution
8481 notes are subject to this subsection. The commissioner may approve the issuance only if the
8482 commissioner finds that:
8483 (i) the notes will not be issued in denominations of less than $2,500, and no single
8484 issue will be sold to more than 15 persons;
8485 (ii) no discount, commission, or other fee will be paid or allowed;
8486 (iii) the notes will not be the subject of a public offering;
8487 (iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds,
8488 or prior contribution notes; and
8489 (v) the mutual's articles or bylaws do not forbid their issuance.
8490 (c) A mutual may not:

8491 (i) if it has any outstanding obligations on bonds or contribution notes, borrow on
8492 contribution notes from, or sell bonds to, any other insurer without the approval of the
8493 commissioner; or
8494 (ii) make a loan to another insurer except a fully secured loan at usual market rates of
8495 interest.
8496 (d) Payment of the principal or interest on bonds or contribution notes may be made in
8497 whole or in part only after approval by the commissioner. The commissioner's approval shall
8498 be given if all the financial requirements of the issuer to do the insurance business it is then
8499 doing will continue to be satisfied after that payment, and if the interests of its insureds and the
8500 public are not endangered by the payment. In the event of liquidation under Chapter 27a,
8501 Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are
8502 subordinate to the payment of principal and interest on any bonds issued by the corporation.
8503 (e) This section does not prevent a mutual from borrowing money on notes which are
8504 its general obligations, nor from pledging any part of its disposable assets.
8505 (3) This section does not apply to securities issued prior to July 1, 1986.
8506 Section 230. Section **31A-6a-104** is amended to read:
8507 **31A-6a-104. Required disclosures.**
8508 (1) A service contract reimbursement insurance policy insuring a service contract that
8509 is issued, sold, or offered for sale in this state [~~must~~] shall conspicuously state that, upon failure
8510 of the service contract provider to perform under the contract, the issuer of the policy shall:
8511 (a) pay on behalf of the service contract provider any sums the service contract
8512 provider is legally obligated to pay according to the service contract provider's contractual
8513 obligations under the service contract issued or sold by the service contract provider; or
8514 (b) provide the service which the service contract provider is legally obligated to
8515 perform, according to the service contract provider's contractual obligations under the service
8516 contract issued or sold by the service contract provider.
8517 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless
8518 the service contract contains the following statements in substantially the following form:
8519 (i) "Obligations of the provider under this service contract are guaranteed under a
8520 service contract reimbursement insurance policy. Should the provider fail to pay or provide
8521 service on any claim within 60 days after proof of loss has been filed, the contract holder is

8522 entitled to make a claim directly against the Insurance Company."; and
8523 (ii) "This service contract or warranty is subject to limited regulation by the Utah
8524 Insurance Department. To file a complaint, contact the Utah Insurance Department."
8525 (b) A service contract or reimbursement insurance policy may not be issued, sold, or
8526 offered for sale in this state unless the contract contains a statement in substantially the
8527 following form, "Coverage afforded under this contract is not guaranteed by the Property and
8528 Casualty Guaranty Association."
8529 (3) A service contract shall:
8530 (a) conspicuously state the name, address, and a toll free claims service telephone
8531 number of the reimbursement insurer;
8532 (b) identify the service contract provider, the seller, and the service contract holder;
8533 (c) conspicuously state the total purchase price and the terms under which the service
8534 contract is to be paid;
8535 (d) conspicuously state the existence of any deductible amount;
8536 (e) specify the merchandise, service to be provided, and any limitation, exception, or
8537 exclusion;
8538 (f) state a term, restriction, or condition governing the transferability of the service
8539 contract; and
8540 (g) state a term, restriction, or condition that governs cancellation of the service
8541 contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder
8542 or service contract provider.
8543 (4) If prior approval of repair work is required, a service contract [~~must~~] shall
8544 conspicuously state the procedure for obtaining prior approval and for making a claim,
8545 including:
8546 (a) a toll free telephone number for claim service; and
8547 (b) a procedure for obtaining reimbursement for emergency repairs performed outside
8548 of normal business hours.
8549 (5) A preexisting condition clause in a service contract [~~must~~] shall specifically state
8550 which preexisting condition is excluded from coverage.
8551 (6) (a) Except as provided in Subsection (6)(c), a service contract [~~must~~] shall state the
8552 conditions upon which the use of a nonmanufacturers' part is allowed.

8553 (b) A condition described in Subsection (6)(a) [~~must~~] shall comply with applicable
8554 state and federal laws.
8555 (c) This Subsection (6) does not apply to a home warranty contract.
8556 Section 231. Section **31A-8a-201** is amended to read:
8557 **31A-8a-201. License required.**
8558 (1) Except as provided in Subsection 31A-8a-103(3), prior to operating a health
8559 discount program, a person [~~must~~] shall:
8560 (a) be authorized to transact business in this state; and
8561 (b) be licensed by the commissioner.
8562 (2) (a) An application for licensure under this chapter [~~must~~] shall be filed with the
8563 commissioner on a form prescribed by the commissioner.
8564 (b) The application shall be sworn to by an officer or authorized representative of the
8565 health discount program and shall include:
8566 (i) articles of incorporation with bylaws or other enabling documents that establish the
8567 organizational structure;
8568 (ii) information required by the commissioner by administrative rule which the
8569 commissioner determines is necessary to:
8570 (A) identify and locate principals, operators, and marketers involved with the health
8571 discount program; and
8572 (B) protect the interests of enrollees of health discount programs, health care providers,
8573 and consumers;
8574 (iii) biographical information, and when requested by the commissioner, a criminal
8575 background check, under the provisions of Subsection 31A-23a-105(3);
8576 (iv) the disclosures required in Section 31A-8a-203; and
8577 (v) the fee established in accordance with Section 31A-3-103.
8578 Section 232. Section **31A-8a-203** is amended to read:
8579 **31A-8a-203. Information filed with the department.**
8580 (1) Prior to operating a health discount program, a person [~~must~~] shall submit the
8581 following to the commissioner:
8582 (a) a copy of contract forms used by the health discount program for:
8583 (i) health care providers or health care provider networks participating in the health

8584 discount program, including the discounts for medical services provided to enrollees;
8585 (ii) marketing;
8586 (iii) administration of the health discount program;
8587 (iv) enrollment;
8588 (v) investment management for the health discount programs; and
8589 (vi) subcontracts for any services;
8590 (b) the program's proposed marketing plan; and
8591 (c) dispute resolution procedures for program holders.
8592 (2) The company [~~must~~] shall file prior to use:
8593 (a) the form of contracts used by the health discount program operator;
8594 (b) the marketing plan; and
8595 (c) dispute resolution procedures.
8596 (3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah
8597 Administrative Rulemaking Act, to implement this section.
8598 Section 233. Section **31A-8a-204** is amended to read:
8599 **31A-8a-204. Advertising restrictions and requirements.**
8600 (1) An operator of a health discount program may not:
8601 (a) use any form of words or terms that may confuse health discount programs with
8602 other types of health insurance in advertising or marketing such as "health plan," "health
8603 benefit plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue,"
8604 "premium," and "preferred provider";
8605 (b) use other terms as designated by the commissioner by administrative rule in
8606 advertisement or marketing that could reasonably mislead a consumer to believe that a discount
8607 health program is any other form of health insurance; or
8608 (c) refer to sales representatives as "agents," "producers," or "consultants."
8609 (2) A health discount program operator:
8610 (a) [~~must~~] shall have a written agreement with any marketer of the health discount
8611 program prior to marketing, selling, promoting, or distributing the health discount programs;
8612 (b) [~~must~~] shall file with the commissioner all advertisement, marketing materials,
8613 brochures, and discount programs prior to their use or distribution; and
8614 (c) [~~must~~] shall make the following disclosures:

8615 (i) in writing in at least 10-point type and bolded; and
8616 (ii) with any marketing or advertising to the public and with any enrollment forms
8617 given to an enrollee:
8618 (A) the program is not a health insurance policy;
8619 (B) the program provides discounts only at certain health care providers for health care
8620 services;
8621 (C) the program holder is obligated to pay for all health care services but will receive a
8622 discount from those health care providers who have contracted with the health discount
8623 program; and
8624 (D) the corporate name and the location of the health discount program operator.
8625 (3) A health discount program operator or marketer who sells the health discount
8626 program with another product [~~must~~] shall provide the consumer a written itemization of the
8627 fees of the health discount program separate from any fees or charges for the other product,
8628 which can be purchased separately.
8629 Section 234. Section **31A-8a-205** is amended to read:
8630 **31A-8a-205. Disclosure of health discount program terms.**
8631 (1) (a) Health discount program operators [~~must~~] shall provide to each purchaser or
8632 potential purchaser a copy of the terms of the discount program at the time of purchase.
8633 (b) For purposes of this section "purchaser" means the employer in an employer
8634 sponsored plan, or an individual purchasing outside of an employer relationship.
8635 (2) The disclosure required by Subsection (1) should be clear and thorough and should
8636 include any administrative or monthly fees, trial periods, procedures for securing discounts,
8637 cancellation procedures and corresponding refund requests, and procedures for filing disputes.
8638 (3) (a) A contract [~~must~~] shall be signed by the purchaser acknowledging the terms
8639 before any fees are collected and [~~must~~] shall include notice of the purchaser's 10-day recision
8640 rights.
8641 (b) For purposes of this Subsection (3) and Section 46-4-201, when a contract is
8642 entered into via telephone, facsimile transmission or the Internet, the following is considered a
8643 signing of the contract:
8644 (i) if via the Internet, the online application form is completed and sent by the
8645 purchaser to the health discount program operator;

8646 (ii) if via facsimile transmission, the application is completed, signed and faxed to the
8647 health discount program operator; or
8648 (iii) if via telephone, the script used by the health discount program operator to solicit
8649 the purchaser [~~must~~] shall include any limitations or exclusions to the program, and the
8650 contract [~~must~~] shall be provided to the purchaser via facsimile, mail, or email within 10
8651 working days of the purchaser consenting to enrolling over the telephone.
8652 Section 235. Section **31A-8a-206** is amended to read:
8653 **31A-8a-206. Provider agreements -- Record keeping.**
8654 (1) A health discount program operator may not place any restrictions on an enrollee's
8655 access to health care providers such as waiting periods or notification periods.
8656 (2) A health discount program operator may not reimburse health care providers for
8657 services rendered to an enrollee, unless the health discount program operator is a licensed third
8658 party administrator.
8659 (3) (a) A health discount program operator [~~must~~] shall have a written agreement with
8660 a health care provider who agrees to provide discounts to health discount program enrollees.
8661 (b) If the written agreement is with a provider network, the health discount plan [~~must~~]
8662 shall require the provider network to have written agreements with each of its health care
8663 providers.
8664 (4) The health discount program operator shall maintain a copy of each active health
8665 care provider agreement.
8666 Section 236. Section **31A-8a-207** is amended to read:
8667 **31A-8a-207. Notice of change.**
8668 (1) A health discount program operator [~~must~~] shall provide the commissioner notice
8669 of:
8670 (a) any change in the health discount program's organizational name, change of
8671 business or mailing address, or change in ownership or principals; and
8672 (b) any change in the information submitted in accordance with Section 31A-8a-203.
8673 (2) (a) The notice required by Subsection (1) [~~should~~] shall be submitted 30 days prior
8674 to any change.
8675 (b) [~~The~~] Approval by the commissioner [~~must approve~~] is required for any changes in
8676 forms that required approval under Section 31A-8a-203.

8677 (3) A health insurer or health maintenance organization licensed under this title shall
8678 annually file with the Accident and Health Data Survey, a list of all value-added benefits
8679 offered at no cost to its enrollees.
8680 Section 237. Section **31A-9-503** is amended to read:
8681 **31A-9-503. Conversion of a fraternal to a mutual.**
8682 A domestic fraternal may be converted into a mutual, as follows:
8683 (1) In addition to complying with the requirements of Chapter 16, Insurance Holding
8684 Companies, the board or the supreme governing body shall adopt a plan of conversion stating:
8685 (a) the reasons for and purposes of the proposed action;
8686 (b) the proposed terms, conditions, and procedures and the estimated expenses of
8687 implementing the conversion;
8688 (c) the proposed name of the corporation; and
8689 (d) the proposed articles and bylaws.
8690 (2) If the board and the supreme governing body disagree on the conversion plan, the
8691 decision of the supreme governing body prevails.
8692 (3) The plan shall be filed with the commissioner for approval, together with any
8693 information under Subsection 31A-5-204(2) the commissioner reasonably requires. The
8694 commissioner shall approve the plan unless [~~he~~] the commissioner finds, after a hearing, that it
8695 would be contrary to the law, that the new mutual would not satisfy the requirements for a
8696 certificate of authority under Section 31A-5-212, that the plan would be contrary to the
8697 interests of members or the public, or that the applicable requirements of Chapter 16, Insurance
8698 Holding Companies, have not been satisfied.
8699 (4) After being approved by the commissioner, the plan shall be submitted for approval
8700 to the persons who were voting members on the date of the commissioner's approval under
8701 Subsection (3). For approval of the plan, at least a majority of the votes cast [~~must~~] shall be in
8702 favor of the plan, or a larger number if required by the laws of the fraternal.
8703 (5) The officers and directors of the fraternal shall be the initial officers and directors
8704 of the mutual.
8705 (6) A copy of the resolution adopted under Subsection (4) shall be filed with the
8706 commissioner, stating the number of members entitled to vote, the number voting, the method
8707 of voting, and the number of votes cast in favor of the plan, stating separately the votes cast by

8708 mail and the votes cast in person.
8709 (7) If the requirements of the law are met, the commissioner shall issue a certificate of
8710 authority to the new mutual. The fraternal then ceases its legal existence and the corporate
8711 existence of the new mutual begins. However, the new mutual is considered to have been
8712 incorporated as of the date the converted fraternal was incorporated. The new mutual has all
8713 the assets and is liable for all of the obligations of the converted fraternal. The commissioner
8714 may grant a period not exceeding one year for adjustment to the requirements of Chapter 5,
8715 Domestic Stock and Mutual Insurance Corporations, specifying the extent to which particular
8716 provisions of Chapter 5 do not apply.
8717 (8) The corporation may not pay compensation other than regular salaries to existing
8718 personnel in connection with the proposed conversion. With the commissioner's approval,
8719 payment may be made at reasonable rates for printing costs and for legal and other professional
8720 fees for services actually rendered in connection with the conversion. All expenses of the
8721 conversion, including the expenses incurred by the commissioner and the prorated salaries of
8722 any insurance office staff members involved, shall be paid by the corporation being converted.
8723 Section 238. Section **31A-11-107** is amended to read:
8724 **31A-11-107. Issuance of certificate of authority -- Reinsurance of excess services.**
8725 (1) The commissioner shall issue a certificate applied for under Section 31A-11-106 if
8726 [~~he~~] the commissioner finds that:
8727 (a) the corporation is able to negotiate, execute, and carry out the motor club business
8728 in a sound, reliable, and ongoing manner;
8729 (b) the reinsurance requirements of Subsection (2) are satisfied; and
8730 (c) all other applicable requirements of law are satisfied.
8731 (2) If a motor club provides legal expense service other than that authorized in
8732 Subsection 31A-11-102(1)(b), or other trip reimbursement service than that authorized in
8733 Subsection 31A-11-102(1)(d), or bail service other than that authorized under Section
8734 31A-11-112, it [~~must~~] shall fully reinsure the excess service with an insurer authorized under
8735 Chapter 5, Domestic Stock and Mutual Insurance Corporations, or 14, Foreign Insurers. That
8736 insurer [~~must~~] shall assume direct liability to the insured, and [~~must~~] shall fully comply with
8737 Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance
8738 Intermediaries.

8739 Section 239. Section **31A-15-203** is amended to read:
8740 **31A-15-203. Risk retention groups chartered in this state.**
8741 (1) (a) A risk retention group under this part shall be chartered and licensed to write
8742 only liability insurance pursuant to this part and, except as provided elsewhere in this part,
8743 [~~must~~] shall comply with all of the laws, rules, and requirements that apply to liability insurers
8744 chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements
8745 are not a limitation on other laws, rules, or requirements of this state.
8746 (b) Notwithstanding any other provision to the contrary, all risk retention groups
8747 chartered in this state shall file an annual statement with the department and the NAIC in a
8748 form prescribed by the commissioner, and completed in diskette form if required by the
8749 commissioner, completed in accordance with the statement instructions and the NAIC
8750 Accounting Practices and Procedures Manual.
8751 (2) Before it may offer insurance in any state, each risk retention group shall also
8752 submit for approval to the commissioner a plan of operation or feasibility study. The risk
8753 retention group shall submit an appropriate revision of the plan or study in the event of any
8754 subsequent material change in any item of the plan or study within 10 days of any such change.
8755 The group may not offer any additional kinds of liability insurance, in this state or in any other
8756 state, until any revision of the plan or study is approved by the commissioner.
8757 (3) (a) At the time of filing its application for charter, the risk retention group shall
8758 provide to the commissioner in summary form the following information:
8759 (i) the identity of the initial members of the group;
8760 (ii) the identity of those individuals who organized the group or who will provide
8761 administrative services or otherwise influence or control the activities of the group;
8762 (iii) the amount and nature of initial capitalization;
8763 (iv) the coverages to be afforded; and
8764 (v) the states in which the group intends to operate.
8765 (b) Upon receipt of this information the commissioner shall forward the information to
8766 the NAIC. Providing notification to the NAIC is in addition to, and may not be sufficient to
8767 satisfy, the requirements of Section 31A-15-204 or any other sections of this part.
8768 Section 240. Section **31A-15-207** is amended to read:
8769 **31A-15-207. Purchasing groups -- Exemption from certain laws.**

8770 A purchasing group and its insurers are subject to all applicable laws of this state,
8771 except that a purchasing group and its insurers are exempt, in regard to liability insurance for
8772 the purchasing group, from any law that would:
8773 (1) prohibit the establishment of a purchasing group;
8774 (2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing
8775 group or its members insurance on a basis providing advantages based on their loss and
8776 expense experience not afforded to other persons with respect to rates, policy forms, coverages,
8777 or other matters;
8778 (3) prohibit a purchasing group or its members from purchasing insurance on a group
8779 basis described in Subsection (2);
8780 (4) prohibit a purchasing group from obtaining insurance on a group basis because the
8781 group has not been in existence for a minimum period of time or because any member has not
8782 belonged to the group for a minimum period of time;
8783 (5) require that a purchasing group [~~must~~] have a minimum number of members,
8784 common ownership or affiliation, or certain legal form;
8785 (6) require that a certain percentage of a purchasing group [~~must~~] obtain insurance on a
8786 group basis;
8787 (7) otherwise discriminate against a purchasing group or any of its members; or
8788 (8) require that any insurance policy issued to a purchasing group or any of its
8789 members be countersigned by an insurance producer residing in this state.
8790 Section 241. Section **31A-15-210** is amended to read:
8791 **31A-15-210. Purchasing group taxation.**
8792 Premium taxes and taxes on premiums paid for coverage of risks resident or located in
8793 this state by a purchasing group or any members of the purchasing groups are imposed and
8794 [~~must~~] shall be paid as follows:
8795 (1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same
8796 rate and in the same manner and subject to the same procedures, interest, and penalties that
8797 apply to premium taxes and other taxes imposed on other admitted liability insurers relative to
8798 coverage of risks resident or located in this state.
8799 (2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed
8800 on the licensed producer who effected coverage on risks resident or located in this state at the

8801 same rate and in the same manner and subject to the same procedures, interest, and penalties
8802 that apply to taxes imposed on other licensed producers effecting coverage with approved,
8803 nonadmitted surplus lines insurers on risks resident or located in this state.
8804 Section 242. Section **31A-17-503** is amended to read:
8805 **31A-17-503. Actuarial opinion of reserves.**
8806 (1) This section becomes operative on December 31, 1993.
8807 (2) General: Every life insurance company doing business in this state shall annually
8808 submit the opinion of a qualified actuary as to whether the reserves and related actuarial items
8809 held in support of the policies and contracts specified by the commissioner by rule are
8810 computed appropriately, are based on assumptions which satisfy contractual provisions, are
8811 consistent with prior reported amounts, and comply with applicable laws of this state. The
8812 commissioner by rule shall define the specifics of this opinion and add any other items
8813 considered to be necessary to its scope.
8814 (3) Actuarial analysis of reserves and assets supporting reserves:
8815 (a) Every life insurance company, except as exempted by or pursuant to rule, shall also
8816 annually include in the opinion required by Subsection (2), an opinion of the same qualified
8817 actuary as to whether the reserves and related actuarial items held in support of the policies and
8818 contracts specified by the commissioner by rule, when considered in light of the assets held by
8819 the company with respect to the reserves and related actuarial items, including [~~but not limited~~
8820 ~~to~~] the investment earnings on the assets and the considerations anticipated to be received and
8821 retained under the policies and contracts, make adequate provision for the company's
8822 obligations under the policies and contracts, including [~~but not limited to~~] the benefits under
8823 the expenses associated with the policies and contracts.
8824 (b) The commissioner may provide by rule for a transition period for establishing any
8825 higher reserves which the qualified actuary may consider necessary in order to render the
8826 opinion required by this section.
8827 (4) Requirement for opinion under Subsection (3): Each opinion required by
8828 Subsection (3) shall be governed by the following provisions:
8829 (a) A memorandum, in form and substance acceptable to the commissioner as specified
8830 by rule, shall be prepared to support each actuarial opinion.
8831 (b) If the insurance company fails to provide a supporting memorandum at the request

8832 of the commissioner within a period specified by rule or the commissioner determines that the
8833 supporting memorandum provided by the insurance company fails to meet the standards
8834 prescribed by the rule or is otherwise unacceptable to the commissioner, the commissioner may
8835 engage a qualified actuary at the expense of the company to review the opinion and the basis
8836 for the opinion and prepare such supporting memorandum as is required by the commissioner.
8837 (5) Requirement for all opinions: Every opinion shall be governed by the following
8838 provisions:
8839 (a) The opinion shall be submitted with the annual statement reflecting the valuation of
8840 the reserve liabilities for each year ending on or after December 31, 1993.
8841 (b) The opinion shall apply to all business in force including individual and group
8842 health insurance plans, in form and substance acceptable to the commissioner as specified by
8843 rule.
8844 (c) The opinion shall be based on standards adopted from time to time by the Actuarial
8845 Standards Board and on such additional standards as the commissioner may by rule prescribe.
8846 (d) In the case of an opinion required to be submitted by a foreign or alien company,
8847 the commissioner may accept the opinion filed by that company with the insurance supervisory
8848 official of another state if the commissioner determines that the opinion reasonably meets the
8849 requirements applicable to a company domiciled in this state.
8850 (e) For the purposes of this section, "qualified actuary" means a member in good
8851 standing of the American Academy of Actuaries who meets the requirements set forth by
8852 department rule.
8853 (f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for
8854 damages to any person, other than the insurance company and the commissioner, for any act,
8855 error, omission, decision, or conduct with respect to the actuary's opinion.
8856 (g) Disciplinary action by the commissioner against the company or the qualified
8857 actuary shall be defined in rules by the commissioner.
8858 (h) Any memorandum in support of the opinion, and any other material provided by the
8859 company to the commissioner in connection therewith, are considered protected records under
8860 Section 63G-2-305 and may not be made public and are not subject to subpoena under
8861 Subsection 63G-2-202(7), other than for the purpose of defending an action seeking damages
8862 from any person by reason of any action required by this section or rules promulgated under

8863 this section. However, the memorandum or other material may otherwise be released by the
8864 commissioner (i) with the written consent of the company or (ii) to the American Academy of
8865 Actuaries upon request stating that the memorandum or other material is required for the
8866 purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the
8867 commissioner for preserving the confidentiality of the memorandum or other material. Once
8868 any portion of the confidential memorandum is cited in its marketing or is cited before any
8869 governmental agency other than the department or is released to the news media, all portions of
8870 the memorandum are no longer confidential.
8871 Section 243. Section **31A-17-506** is amended to read:
8872 **31A-17-506. Computation of minimum standard by calendar year of issue.**
8873 (1) Applicability of Section 31A-17-506: The interest rates used in determining the
8874 minimum standard for the valuation shall be the calendar year statutory valuation interest rates
8875 as defined in this section for:
8876 (a) all life insurance policies issued in a particular calendar year, on or after the
8877 operative date of Subsection 31A-22-408(6)(d);
8878 (b) all individual annuity and pure endowment contracts issued in a particular calendar
8879 year on or after January 1, 1982;
8880 (c) all annuities and pure endowments purchased in a particular calendar year on or
8881 after January 1, 1982, under group annuity and pure endowment contracts; and
8882 (d) the net increase, if any, in a particular calendar year after January 1, 1982, in
8883 amounts held under guaranteed interest contracts.
8884 (2) Calendar year statutory valuation interest rates:
8885 (a) The calendar year statutory valuation interest rates, "I," shall be determined as
8886 follows and the results rounded to the nearer 1/4 of 1%:
8887 (i) for life insurance:
8888 I = .03 + W(R1 - .03) + (W/2)(R2 - .09);
8889 (ii) for single premium immediate annuities and for annuity benefits involving life
8890 contingencies arising from other annuities with cash settlement options and from guaranteed
8891 interest contracts with cash settlement options:
8892 I = .03 + W(R - .03),
8893 where R1 is the lesser of R and .09,

8894 R2 is the greater of R and .09,
8895 R is the reference interest rate defined in Subsection (4), and
8896 W is the weighting factor defined in this section;
8897 (iii) for other annuities with cash settlement options and guaranteed interest contracts
8898 with cash settlement options, valued on an issue year basis, except as stated in Subsection
8899 (2)(a)(ii), the formula for life insurance stated in Subsection (2)(a)(i) shall apply to annuities
8900 and guaranteed interest contracts with guarantee durations in excess of 10 years, and the
8901 formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply to
8902 annuities and guaranteed interest contracts with guarantee duration of 10 years or less;
8903 (iv) for other annuities with no cash settlement options and for guaranteed interest
8904 contracts with no cash settlement options, the formula for single premium immediate annuities
8905 stated in Subsection (2)(a)(ii) shall apply; and
8906 (v) for other annuities with cash settlement options and guaranteed interest contracts
8907 with cash settlement options, valued on a change in fund basis, the formula for single premium
8908 immediate annuities stated in Subsection (2)(a)(ii) shall apply.
8909 (b) However, if the calendar year statutory valuation interest rate for any life insurance
8910 policies issued in any calendar year determined without reference to this sentence differs from
8911 the corresponding actual rate for similar policies issued in the immediately preceding calendar
8912 year by less than [~~1/2~~] <u>one-half</u> of 1% the calendar year statutory valuation interest rate for such
8913 life insurance policies shall be equal to the corresponding actual rate for the immediately
8914 preceding calendar year. For purposes of applying the immediately preceding sentence, the
8915 calendar year statutory valuation interest rate for life insurance policies issued in a calendar
8916 year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be
8917 determined for each subsequent calendar year regardless of when Subsection 31A-22-408(6)(d)
8918 becomes operative.
8919 (3) Weighting factors:
8920 (a) The weighting factors referred to in the formulas stated in Subsection (2) are given
8921 in the following tables:
8922 (i) (A) Weighting factors for life insurance:
8923

Guarantee Duration (Years)	Weighting Factors
10 or less:	.50
More than 10, but less than 20:	.45
More than 20:	.35

(B) For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Subsection (3)(a)(ii), shall be as specified in the tables in Subsections (3)(a)(iii)(A), (B), and (C), according to the rules and definitions in Subsection (3)(b):

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factors for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35
Plan Type			
	A	B	C

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in Subsection (3)(a)(iii)(A) increased by:

8951 .15 .25 .05
8952 Plan Type
8953 A B C
8954 (C) For annuities and guaranteed interest
8955 contracts valued on an issue year basis, other than
8956 those with no cash settlement options, which do
8957 not guarantee interest on considerations received
8958 more than one year after issue or purchase and for
8959 annuities and guaranteed interest contracts valued
8960 on a change in fund basis which do not guarantee
8961 interest rates on considerations received more
8962 than 12 months beyond the valuation date, the
8963 factors shown in Subsection (3)(a)(iii)(A) or
8964 derived in Subsection (3)(a)(iii)(B) increased by: .05 .05 .05.
8965 (b) (i) For other annuities with cash settlement options and guaranteed interest
8966 contracts with cash settlement options, the guarantee duration is the number of years for which
8967 the contract guarantees interest rates in excess of the calendar year statutory valuation interest
8968 rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities
8969 with no cash settlement options and for guaranteed interest contracts with no cash settlement
8970 options, the guaranteed duration is the number of years from the date of issue or date of
8971 purchase to the date annuity benefits are scheduled to commence.
8972 (ii) Plan type as used in the above tables is defined as follows:
8973 (A) Plan Type A: At any time policyholder may withdraw funds only:
8974 (I) with an adjustment to reflect changes in interest rates or asset values since receipt of
8975 the funds by the insurance company;
8976 (II) without such adjustment but installments over five years or more;
8977 (III) as an immediate life annuity; or
8978 (IV) no withdrawal permitted.
8979 (B) (I) Plan Type B: Before expiration of the interest rate guarantee, policyholder
8980 withdraw funds only:
8981 (Aa) with an adjustment to reflect changes in interest rates or asset values since receipt

8982 of the funds by the insurance company;
8983 (Bb) without such adjustment but in installments over five years or more; or
8984 (Cc) no withdrawal permitted.
8985 (II) At the end of interest rate guarantee, funds may be withdrawn without such
8986 adjustment in a single sum or installments over less than five years.
8987 (C) Plan Type C: Policyholder may withdraw funds before expiration of interest rate
8988 guarantee in a single sum or installments over less than five years either:
8989 (I) without adjustment to reflect changes in interest rates or asset values since receipt of
8990 the funds by the insurance company; or
8991 (II) subject only to a fixed surrender charge stipulated in the contract as a percentage of
8992 the fund.
8993 (iii) A company may elect to value guaranteed interest contracts with cash settlement
8994 options and annuities with cash settlement options on either an issue year basis or on a change
8995 in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities
8996 with no cash settlement options [~~must~~] shall be valued on an issue year basis. As used in this
8997 section, an issue year basis of valuation refers to a valuation basis under which the interest rate
8998 used to determine the minimum valuation standard for the entire duration of the annuity or
8999 guaranteed interest contract is the calendar year valuation interest rate for the year of issue or
9000 year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of
9001 valuation refers to a valuation basis under which the interest rate used to determine the
9002 minimum valuation standard applicable to each change in the fund held under the annuity or
9003 guaranteed interest contract is the calendar year valuation interest rate for the year of the
9004 change in the fund.
9005 (4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is
9006 defined as follows:
9007 (a) For all life insurance, the lesser of the average over a period of 36 months and the
9008 average over a period of 12 months, ending on June 30 of the calendar year next preceding the
9009 year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds, as
9010 published by Moody's Investors Service, Inc.
9011 (b) For single premium immediate annuities and for annuity benefits involving life
9012 contingencies arising from other annuities with cash settlement options and guaranteed interest

9013 contracts with cash settlement options, the average over a period of 12 months, ending on June
9014 30 of the calendar year of issue or year of purchase, of the Monthly Average of the Composite
9015 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.
9016 (c) For other annuities with cash settlement options and guaranteed interest contracts
9017 with cash settlement options, valued on a year of issue basis, except as stated in Subsection
9018 (4)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of
9019 36 months and the average over a period of 12 months, ending on June 30 of the calendar year
9020 of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate
9021 Bonds, as published by Moody's Investors Service, Inc.
9022 (d) For other annuities with cash settlement options and guaranteed interest contracts
9023 with cash settlement options, valued on a year of issue basis, except as stated in Subsection
9024 (4)(b), with guarantee duration of 10 years or less, the average over a period of 12 months,
9025 ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the
9026 Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service,
9027 Inc.
9028 (e) For other annuities with no cash settlement options and for guaranteed interest
9029 contracts with no cash settlement options, the average over a period of 12 months, ending on
9030 June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite
9031 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.
9032 (f) For other annuities with cash settlement options and guaranteed interest contracts
9033 with cash settlement options, valued on a change in fund basis, except as stated in Subsection
9034 (4)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the
9035 change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate
9036 Bonds, as published by Moody's Investors Service, Inc.
9037 (5) Alternative method for determining reference interest rates: In the event that the
9038 Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published
9039 by Moody's Investors Service, Inc. or in the event that the National Association of Insurance
9040 Commissioners determines that the Monthly Average of the Composite Yield on Seasoned
9041 Corporate Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for
9042 the determination of the reference interest rate, then an alternative method for determination of
9043 the reference interest rate, which is adopted by the National Association of Insurance

9044 Commissioners and approved by rule promulgated by the commissioner, may be substituted.
9045 Section 244. Section **31A-17-507** is amended to read:
9046 **31A-17-507. Reserve valuation method -- Life insurance and endowment benefits.**
9047 (1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and
9048 31A-17-513, reserves according to the commissioner's reserve valuation method, for the life
9049 insurance and endowment benefits of policies providing for a uniform amount of insurance and
9050 requiring the payment of uniform premiums shall be the excess, if any, of the present value, at
9051 the date of valuation, of such future guaranteed benefits provided for by such policies, over the
9052 then present value of any future modified net premiums therefor. The modified net premiums
9053 for any such policy shall be such uniform percentage of the respective contract premiums for
9054 such benefits that the present value, at the date of issue of the policy, of all such modified net
9055 premiums shall be equal to the sum of the then present value of such benefits provided for by
9056 the policy and the excess of Subsection (1)(a) over Subsection (1)(b), as follows:
9057 (a) A net level annual premium equal to the present value, at the date of issue, of such
9058 benefits provided for after the first policy year, divided by the present value, at the date of
9059 issue, of an annuity of one per annum payable on the first and each subsequent anniversary of
9060 such policy on which a premium falls due; provided, however, that such net level annual
9061 premium [~~shall not~~] may not exceed the net level annual premium on the 19 year premium
9062 whole life plan for insurance of the same amount at an age one year higher than the age at issue
9063 of such policy.
9064 (b) A net one year term premium for such benefits provided for in the first policy year.
9065 (2) Provided that for any life insurance policy issued on or after January 1, 1997, for
9066 which the contract premium in the first policy year exceeds that of the second year and for
9067 which no comparable additional benefit is provided in the first year for such excess and which
9068 provides an endowment benefit or a cash surrender value or a combination thereof in an
9069 amount greater than such excess premium, the reserve according to the commissioner's reserve
9070 valuation method as of any policy anniversary occurring on or before the assumed ending date
9071 defined herein as the first policy anniversary on which the sum of any endowment benefit and
9072 any cash surrender value then available is greater than such excess premium shall, except as
9073 otherwise provided in Section 31A-17-511, be the greater of the reserve as of such policy
9074 anniversary calculated as described in Subsection (1) and the reserve as of such policy

9075 anniversary calculated as described in that subsection, but with:
9076 (a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such
9077 excess first year premium;
9078 (b) all present values of benefits and premiums being determined without reference to
9079 premiums or benefits provided for by the policy after the assumed ending date;
9080 (c) the policy being assumed to mature on such date as an endowment; and
9081 (d) the cash surrender value provided on such date being considered as an endowment
9082 benefit. In making the above comparison the mortality and interest bases stated in Sections
9083 31A-17-504 and 31A-17-506 shall be used.
9084 (3) Reserves according to the commissioner's reserve valuation method for:
9085 (a) life insurance policies providing for a varying amount of insurance or requiring the
9086 payment of varying premiums;
9087 (b) group annuity and pure endowment contracts purchased under a retirement plan or
9088 plan of deferred compensation, established or maintained by an employer, including a
9089 partnership or sole proprietorship, or by an employee organization, or by both, other than a plan
9090 providing individual retirement accounts or individual retirement annuities under Section 408,
9091 Internal Revenue Code;
9092 (c) accident and health and accidental death benefits in all policies and contracts; and
9093 (d) all other benefits, except life insurance and endowment benefits in life insurance
9094 policies and benefits provided by all other annuity and pure endowment contracts, shall be
9095 calculated by a method consistent with the principles of Subsections (1) and (2).
9096 Section 245. Section **31A-17-510** is amended to read:
9097 **31A-17-510. Optional reserve calculation.**
9098 (1) Reserves for all policies and contracts issued prior to January 1, 1994, may be
9099 calculated, at the option of the company, according to any standards which produce greater
9100 aggregate reserves for all such policies and contracts than the minimum reserves required by
9101 the laws in effect immediately prior to that date. Reserves for any category of policies,
9102 contracts, or benefits as established by the commissioner, issued on or after January 1, 1994,
9103 may be calculated, at the option of the company, according to any standards which produce
9104 greater aggregate reserves for such category than those calculated according to the minimum
9105 standard herein provided, but the rate or rates of interest used for policies and contracts, other

9106 than annuity and pure endowment contracts, [~~shall not~~] may not be higher than the
9107 corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided
9108 therein.
9109 (2) Any such company which at any time shall have adopted any standard of valuation
9110 producing greater aggregate reserves than those calculated according to the minimum standard
9111 herein provided may, with the approval of the commissioner, adopt any lower standard of
9112 valuation, but not lower than the minimum herein provided; provided, however, that, for the
9113 purposes of this section, the holding of additional reserves previously determined by a qualified
9114 actuary to be necessary to render the opinion required by Section 31A-17-502 [~~shall not~~] may
9115 not be considered to be the adoption of a higher standard of valuation.
9116 Section 246. Section **31A-17-512** is amended to read:
9117 **31A-17-512. Reserve calculation -- Indeterminate premium plans.**
9118 (1) In the case of any plan of life insurance which provides for future premium
9119 determination, the amounts of which are to be determined by the insurance company based on
9120 then estimates of future experience, or in the case of any plan of life insurance or annuity which
9121 is of such a nature that the minimum reserves cannot be determined by the methods described
9122 in Sections 31A-17-507, 31A-17-508, and 31A-17-511, the reserves which are held under any
9123 such plan [~~must~~] shall:
9124 (a) be appropriate in relation to the benefits and the pattern of premiums for that plan;
9125 and
9126 (b) be computed by a method which is consistent with the principles of this part, as
9127 determined by rules promulgated by the commissioner.
9128 Section 247. Section **31A-18-106** is amended to read:
9129 **31A-18-106. Investment limitations generally applicable.**
9130 (1) The investment limitations listed in Subsections (1)(a) through (m) apply to an
9131 insurer.
9132 (a) For an investment authorized under Subsection 31A-18-105(1) that is not
9133 amortizable under applicable valuation rules, the limitation is 5% of assets.
9134 (b) For an investment authorized under Subsection 31A-18-105(2), the limitation is
9135 10% of assets.
9136 (c) For an investment authorized under Subsection 31A-18-105(3), the limitation is

9137 50% of assets.
9138 (d) For an investment authorized under Subsection 31A-18-105(4) that is considered to
9139 be an investment in a kind of security or evidence of debt pledged, the investment is subject to
9140 the class limitations applicable to the pledged security or evidence of debt.
9141 (e) For an investment authorized under Subsection 31A-18-105(5), the limitation is
9142 35% of assets.
9143 (f) For an investment authorized under Subsection 31A-18-105(6), the limitation is:
9144 (i) 20% of assets for a life insurer; and
9145 (ii) 50% of assets for a nonlife insurer.
9146 (g) For an investment authorized under Subsection 31A-18-105(7), the limitation is:
9147 (i) 5% of assets; or
9148 (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service
9149 Insurance Corporations, 25% of assets.
9150 (h) For an investment authorized under Subsection 31A-18-105(8), the limitation is:
9151 (i) 20% of assets, inclusive of home office and branch office properties; or
9152 (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service
9153 Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.
9154 (i) For an investment authorized under Subsection 31A-18-105(10), the limitation is
9155 1% of assets.
9156 (j) For an investment authorized under Subsection 31A-18-105(11), the limitation is
9157 the greater of that permitted or required for compliance with Section 31A-18-103.
9158 (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is
9159 limited to 50% of the insurer's total adjusted capital. An investment by an insurer in a
9160 subsidiary includes:
9161 (i) a loan, advance, or contribution to a subsidiary by an insurer; and
9162 (ii) an insurer holding a bond, note, or stock of a subsidiary.
9163 (l) Under a plan of merger approved by the commissioner, the commissioner may
9164 allow an insurer any portion of its assets invested in an insurance subsidiary. The approved
9165 plan of merger shall require the acquiring insurer to conform its accounting for investments in
9166 subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.
9167 (m) For an investment authorized under Subsections 31A-18-105(13) and (14), the

9168 aggregate limitation is 10% of assets.
9169 (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each
9170 insurer.
9171 (a) (i) For all investments in a single entity, its affiliates, and subsidiaries, the
9172 limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not
9173 apply to:
9174 (A) an investment in the government of the United States or its agencies;
9175 (B) an investment guaranteed by the government of the United States;
9176 (C) an investment in the insurer's insurance subsidiaries; or
9177 (D) a cash deposit that:
9178 (I) is cash;
9179 (II) is held by a depository institution, as defined in Section 7-1-103, that:
9180 (Aa) is solvent;
9181 (Bb) is federally insured; and
9182 (Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the
9183 depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total
9184 assets of at least 5%, if the depository institution is not a bank; and
9185 (III) does not exceed the greater of:
9186 (Aa) .4 times the Tier 1 capital of the depository institution; or
9187 (Bb) the amount insured by a federal deposit insurance agency.
9188 (ii) The commissioner by rule made in accordance with Title 63G, Chapter 3, Utah
9189 Administrative Rulemaking Act, shall:
9190 (A) define "Tier 1 leverage ratio";
9191 (B) define "Tier 1 capital"; and
9192 (C) proscribe the method to calculate Tier 1 capital.
9193 (b) An investment authorized by Subsection 31A-18-105(3) shall comply with the
9194 requirements listed in this Subsection (2)(b).
9195 (i) (A) Except as provided in this Subsection (2)(b)(i), the amount of a loan secured by
9196 a mortgage or deed of trust may not exceed 80% of the value of the real estate interest
9197 mortgaged, unless the excess over 80%:
9198 (I) is insured or guaranteed by:

9199 (Aa) the United States;
9200 (Bb) a state of the United States;
9201 (Cc) an instrumentality, agency, or political subdivision of the United States or a state;
9202 or
9203 (Dd) a combination of entities described in this Subsection (2)(b)(i)(A)(I); or
9204 (II) is insured by an insurer approved by the commissioner and qualified to insure that
9205 type of risk in this state.
9206 (B) A mortgage loan representing a purchase money mortgage acquired from the sale
9207 of real estate is not subject to the limitation of Subsection (2)(b)(i)(A).
9208 (ii) Subject to Subsection (2)(b)(v), a loan or evidence of debt secured by real estate
9209 may only be secured by:
9210 (A) unencumbered real property that is located in the United States; or
9211 (B) an unencumbered interest in real property that is located in the United States.
9212 (iii) Evidence of debt secured by a first mortgage or deed of trust upon a leasehold
9213 estate shall require that:
9214 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the
9215 lease term;
9216 (B) the real estate not be otherwise encumbered; and
9217 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.
9218 (iv) Subject to Subsection (2)(b)(v):
9219 (A) participation in a mortgage loan [~~must~~] shall:
9220 (I) be senior to other participants; and
9221 (II) give the holder substantially the rights of a first mortgagee; or
9222 (B) the interest of the insurer in the evidence of indebtedness [~~must~~] shall be of equal
9223 priority, to the extent of the interest, with other interests in the real property.
9224 (v) A fee simple or leasehold real estate or an interest in a fee simple or leasehold is
9225 not considered to be encumbered within the meaning of this chapter by reason of a prior
9226 mortgage or trust deed held or assumed by the insurer as a lien on the property, if:
9227 (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of
9228 the property; and
9229 (B) the security created by the prior mortgage or trust deed is a first lien.

9230 (c) A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of the
9231 market value of the collateral pledged, except that a loan upon the pledge of a United States
9232 government bond may be equal to the market value of the pledge.
9233 (d) For an equity interest in a single real estate property authorized under Subsection
9234 31A-18-105(8), the limitation is 5% of assets.
9235 (e) An investment authorized under Subsection 31A-18-105(10) shall be in connection
9236 with a potential change in the value of specifically identified:
9237 (i) asset that the insurer owns; or
9238 (ii) liability that the insurer has incurred.
9239 (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each
9240 insurer.
9241 (a) Except for a financial futures contract and real property acquired and occupied by
9242 the insurer for home and branch office purposes, a security or other investment is not eligible
9243 for purchase or acquisition under this chapter unless it is:
9244 (i) interest bearing or income paying; and
9245 (ii) not then in default.
9246 (b) A security is not eligible for purchase at a price above its market value.
9247 (4) Computation of percentage limitations under this section:
9248 (a) is based only upon the insurer's total qualified invested assets described in Section
9249 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and
9250 (b) excludes investments permitted under Section 31A-18-108 and Subsections
9251 31A-17-203(2) and (3).
9252 (5) An insurer may not make an investment that, because the investment does not
9253 conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under
9254 Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer
9255 Receivership Act.
9256 (6) A pattern of persistent deviation from the investment diversification standards set
9257 forth in Section 31A-18-105 and this section may be grounds for a finding that the one or more
9258 persons with authority to make the insurer's investment decisions are "incompetent" as used in
9259 Subsection 31A-5-410(3).
9260 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does

9261 not apply to the purchase, holding, investment, or valuation limitations of assets of insurance
9262 companies subject to this chapter.
9263 Section 248. Section **31A-19a-206** is amended to read:
9264 **31A-19a-206. Disapproval of rates.**
9265 (1) (a) Except for a conflict with the requirements of Section 31A-19a-201 or
9266 31A-19a-202, the commissioner may disapprove a rate at any time that the rate directly
9267 conflicts with:
9268 (i) this title; or
9269 (ii) any rule made under this title.
9270 (b) The disapproval under Subsection (1)(a) shall:
9271 (i) be in writing;
9272 (ii) specify the statute or rule with which the filing conflicts; and
9273 (iii) state when the rule is no longer effective.
9274 (c) (i) If an insurer's or rate service organization's rate filing is disapproved under
9275 Subsection (1)(a), the insurer or rate service organization may request a hearing on the
9276 disapproval within 30 calendar days of the date on which the order described in Subsection
9277 (1)(a) is issued.
9278 (ii) If a hearing is requested under Subsection (1)(c)(i), the commissioner shall
9279 schedule the hearing within 30 calendar days of the date on which the commissioner receives
9280 the request for a hearing.
9281 (iii) After the hearing, the commissioner shall issue an order:
9282 (A) approving the rate filing; or
9283 (B) disapproving the rate filing.
9284 (2) (a) If within 90 calendar days of the date on which a rate filing is filed the
9285 commissioner finds that the rate filing does not meet the requirements of Section 31A-19a-201
9286 or 31A-19a-202, the commissioner shall send a written order disapproving the rate filing to the
9287 insurer or rate organization that made the filing.
9288 (b) The order described in Subsection (2)(a) shall specify how the rate filing fails to
9289 meet the requirements of Section 31A-19a-201 or 31A-19a-202.
9290 (c) (i) If an insurer's or rate service organization's rate filing is disapproved under
9291 Subsection (2)(a), the insurer or rate service organization may request a hearing on the

9292 disapproval within 30 calendar days of the date on which the order described in Subsection
9293 (2)(a) is issued.
9294 (ii) If a hearing is requested under Subsection (2)(c)(i), the commissioner shall
9295 schedule the hearing within 30 calendar days of the date on which the commissioner receives
9296 the request for a hearing.
9297 (iii) After the hearing, the commissioner shall issue an order:
9298 (A) approving the rate filing; or
9299 (B) (I) disapproving the rate filing; and
9300 (II) stating when, within a reasonable time from the date on which the order is issued,
9301 the rate is no longer effective.
9302 (d) In a hearing held under this Subsection (2), the insurer or rate service organization
9303 bears the burden of proving compliance with the requirements of Section 31A-19a-201 or
9304 31A-19a-202.
9305 (3) (a) If the order described in Subsection (2)(a) is issued after the implementation of
9306 the rate filing, the commissioner may order that use of the rate filing be discontinued for any
9307 policy issued or renewed on or after a date not less than 30 calendar days from the date the
9308 order was issued.
9309 (b) If an insurer or rate service organization requests a hearing under Subsection (2),
9310 the order to discontinue use of the rate filing is stayed:
9311 (i) beginning on the date the insurer or rate service organization requests a hearing; and
9312 (ii) ending on the date the commissioner issues an order after the hearing that addresses
9313 the stay.
9314 (4) If the order described in Subsection (2)(a) is issued before the implementation of
9315 the rate filing:
9316 (a) an insurer or rate service organization may not implement the rate filing; and
9317 (b) the rates of the insurer or rate service organization at the time of disapproval
9318 continue to be in effect.
9319 (5) (a) If after a hearing the commissioner finds that a rate that has been previously
9320 filed and has been in effect for more than 90 calendar days no longer meets the requirements of
9321 Section 31A-19a-201 or 31A-19a-202, the commissioner may order that use of the rate by any
9322 insurer or rate service organization be discontinued.

9323 (b) The commissioner shall give any insurer that will be affected by an order that may
9324 be issued under Subsection (5)(a) notice of the hearing at least 10 business days prior to the
9325 hearing.
9326 (c) The order issued under Subsection (5)(a) shall:
9327 (i) be in writing;
9328 (ii) state the grounds for the order; and
9329 (iii) state when, within a reasonable time from the date on which the order is issued,
9330 the rate is no longer effective.
9331 (d) The order issued under Subsection (5)(a) [~~shall not~~] may not affect any contract or
9332 policy made or issued prior to the expiration of the period set forth in the order.
9333 (e) The order issued under Subsection (5)(a) may include a provision for a premium
9334 adjustment for contracts or policies made or issued after the effective date of the order.
9335 (6) (a) When an insurer has no legally effective rates as a result of the commissioner's
9336 disapproval of rates or other act, the commissioner shall, on the insurer's request, specify
9337 interim rates for the insurer.
9338 (b) An interim rate described in Subsection (6)(a):
9339 (i) shall be high enough to protect the interests of all parties; and
9340 (ii) may, when necessary to protect the policyholders, order that a specified portion of
9341 the premiums be placed in an escrow account approved by the commissioner.
9342 (c) When the new rates become effective, the commissioner shall order the escrowed
9343 funds or any overcharge in the interim rates to be distributed appropriately, except that minimal
9344 refunds to policyholders need not be distributed.
9345 Section 249. Section **31A-19a-208** is amended to read:
9346 **31A-19a-208. Special restrictions on individual insurers.**
9347 (1) The commissioner may require by order that a particular insurer file any or all of its
9348 rates and supplementary rate information 30 calendar days prior to their effective date, if the
9349 commissioner finds, after a hearing, that to protect the interests of the insurer's insureds and the
9350 public in Utah, the commissioner [~~must~~] shall exercise closer supervision of the insurer's rates,
9351 because of the insurer's financial condition or rating practices.
9352 (2) The commissioner may extend the waiting period described in Subsection (1) for
9353 any filing for not to exceed 30 additional calendar days, by written notice to the insurer before

9354 the first 30-day period expires.
9355 (3) A filing that has not been disapproved before the expiration of the waiting period is
9356 considered to meet the requirements of this chapter, subject to the possibility of subsequent
9357 disapproval under Section 31A-19a-206.
9358 Section 250. Section **31A-19a-309** is amended to read:
9359 **31A-19a-309. Recording and reporting of experience.**
9360 (1) (a) The commissioner may adopt rules for the development of statistical plans, for
9361 use by all insurers in recording and reporting their loss and expense experience, in order that
9362 the experience of those insurers may be made available to the commissioner.
9363 (b) The rules provided for in Subsection (1) may include:
9364 (i) the data that [~~must~~] shall be reported by an insurer;
9365 (ii) definitions of data elements;
9366 (iii) the timing and frequency of data reporting by an insurer;
9367 (iv) data quality standards;
9368 (v) data edit and audit requirements;
9369 (vi) data retention requirements;
9370 (vii) reports to be generated; and
9371 (viii) the timing of reports to be generated.
9372 (c) Except for workers' compensation insurance under Section 31A-19a-404, an insurer
9373 may not be required to record or report its experience on a classification basis that is
9374 inconsistent with its own rating system.
9375 (2) (a) The commissioner may designate one or more rate service organizations to
9376 assist the commissioner in gathering that experience and making compilations of the
9377 experience.
9378 (b) The compilations developed under Subsection (2)(a) shall be made available to the
9379 public.
9380 (3) The commissioner may make rules and plans for the interchange of data necessary
9381 for the application of rating plans.
9382 (4) To further uniform administration of rate regulatory laws, the commissioner and
9383 every insurer and rate service organization may:
9384 (a) exchange information and experience data with insurance supervisory officials,

9385 insurers, and rate service organizations in other states; and
9386 (b) consult with the persons described in Subsection (4)(a) with respect to the
9387 application of rating systems and the reporting of statistical data.
9388 Section 251. Section **31A-21-101** is amended to read:
9389 **31A-21-101. Scope of Chapters 21 and 22.**
9390 (1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22,
9391 Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:
9392 (a) delivered or issued for delivery in this state;
9393 (b) on property ordinarily located in this state;
9394 (c) on persons residing in this state when the policy is issued; or
9395 (d) on business operations in this state.
9396 (2) This chapter and Chapter 22 do not apply to:
9397 (a) an exemption provided in Section 31A-1-103;
9398 (b) an insurance policy procured under Sections 31A-15-103 and 31A-15-104;
9399 (c) an insurance policy on business operations in this state:
9400 (i) if:
9401 (A) the contract is negotiated primarily outside this state; and
9402 (B) the operations in this state are incidental or subordinate to operations outside this
9403 state; and
9404 (ii) except that insurance required by a Utah statute [~~must~~] shall conform to the
9405 statutory requirements; or
9406 (d) other exemptions provided in this title.
9407 (3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107(1)
9408 and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean
9409 marine and inland marine insurance.
9410 (b) Section 31A-21-201 applies to inland marine insurance that is written according to
9411 manual rules or rating plans.
9412 (4) A group or blanket policy is subject to this chapter and Chapter 22, except:
9413 (a) a group or blanket policy outside the scope of this title under Subsection
9414 31A-1-103(3)(h); and
9415 (b) other exemptions provided under Subsection (5).

9416 (5) The commissioner may by rule exempt any class of insurance contract or class of
9417 insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the
9418 Utah insureds, creditors, or the public would not be harmed by the exemption.
9419 (6) Workers' compensation insurance, including that written by the Workers'
9420 Compensation Fund created under Chapter 33, Workers' Compensation Fund, is subject to this
9421 chapter and Chapter 22.
9422 (7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable
9423 to either a policy or a contract is applicable to both.
9424 Section 252. Section **31A-21-312** is amended to read:
9425 **31A-21-312. Notice and proof of loss.**
9426 (1) Every insurance policy shall provide that:
9427 (a) when notice of loss is required separately from proof of loss, notice given by or on
9428 behalf of the insured to any authorized agent of the insurer within this state, with particulars
9429 sufficient to identify the policy, is notice to the insurer; and
9430 (b) failure to give any notice or file any proof of loss required by the policy within the
9431 time specified in the policy does not invalidate a claim made by the insured, if the insured
9432 shows that it was not reasonably possible to give the notice or file the proof of loss within the
9433 prescribed time and that notice was given or proof of loss filed as soon as reasonably possible.
9434 (2) Failure to give notice or file proof of loss as required by Subsection (1)(b) does not
9435 bar recovery under the policy if the insurer fails to show it was prejudiced by the failure. This
9436 subsection may not be construed to extend the statute of limitations applicable under Section
9437 31A-21-313.
9438 (3) The insurer shall, on request, promptly furnish an insured any forms or instructions
9439 needed to make a proof of loss.
9440 (4) As an alternative to giving notice directly under Subsection (1)(a), it is a sufficient
9441 service of notice or of proof of loss if a first class postage prepaid envelope addressed to the
9442 insurer and containing the proper notice or proof of loss is deposited in any United States post
9443 office within the time prescribed.
9444 (5) The commissioner shall adopt rules dealing with notice of loss and proof of loss
9445 time limitations under insurance policies. Under Section 31A-21-202, the commissioner's
9446 express approval [~~must~~] shall be received before any contract clause requiring notice of loss or

9447 proof of loss in a manner inconsistent with the rule may be used in an insurance contract.
9448 (6) The acknowledgment by the insurer of the receipt of notice, the furnishing of forms
9449 for filing proofs of loss, the acceptance of those proofs, or the investigation of any claim are
9450 not alone sufficient to waive any of the rights of the insurer in defense of any claim arising
9451 under the insurance policy.
9452 Section 253. Section **31A-21-313** is amended to read:
9453 **31A-21-313. Limitation of actions.**
9454 (1) An action on a written policy or contract of first party insurance [~~must~~] shall be
9455 commenced within three years after the inception of the loss.
9456 (2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to
9457 limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on
9458 insurance policies.
9459 (3) An insurance policy may not:
9460 (a) limit the time for beginning an action on the policy to a time less than that
9461 authorized by statute;
9462 (b) prescribe in what court an action may be brought on the policy; or
9463 (c) provide that no action may be brought, subject to permissible arbitration provisions
9464 in contracts.
9465 (4) Unless by verified complaint it is alleged that prejudice to the complainant will
9466 arise from a delay in bringing suit against an insurer, which prejudice is other than the delay
9467 itself, no action may be brought against an insurer on an insurance policy to compel payment
9468 under the policy until the earlier of:
9469 (a) 60 days after proof of loss has been furnished as required under the policy;
9470 (b) waiver by the insurer of proof of loss; or
9471 (c) the insurer's denial of full payment.
9472 (5) The period of limitation is tolled during the period in which the parties conduct an
9473 appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by
9474 the parties.
9475 Section 254. Section **31A-21-403** is amended to read:
9476 **31A-21-403. Orders terminating effectiveness of policies.**
9477 Upon the commissioner's order, no mass marketed life or accident and health insurance

9478 issued by an insurer may continue to be effected on persons in this state. The commissioner
9479 may issue an order under this section only if [~~he~~] the commissioner finds, after a hearing, that
9480 the total charges for the insurance to the persons insured are unreasonable in relation to the
9481 benefits provided. The commissioner's findings under this section [~~must~~] shall be in writing.
9482 Orders under this section may direct the insurer to cease effecting the insurance until the total
9483 charges for the insurance are found by the commissioner to be reasonable in relation to the
9484 benefits provided.
9485 Section 255. Section **31A-22-305** is amended to read:
9486 **31A-22-305. Uninsured motorist coverage.**
9487 (1) As used in this section, "covered persons" includes:
9488 (a) the named insured;
9489 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,
9490 who are residents of the named insured's household, including those who usually make their
9491 home in the same household but temporarily live elsewhere;
9492 (c) any person occupying or using a motor vehicle:
9493 (i) referred to in the policy; or
9494 (ii) owned by a self-insured; and
9495 (d) any person who is entitled to recover damages against the owner or operator of the
9496 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
9497 Subsection (1)(a), (b), or (c).
9498 (2) As used in this section, "uninsured motor vehicle" includes:
9499 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered
9500 under a liability policy at the time of an injury-causing occurrence; or
9501 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
9502 31A-22-304; and
9503 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
9504 the deficiency;
9505 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
9506 by the motor vehicle operator;
9507 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
9508 disputed by the liability insurer for more than 60 days or continues to be disputed for more than

9509 60 days; or
9510 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
9511 the motor vehicle is declared insolvent by a court of competent jurisdiction; and
9512 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
9513 that the claim against the insolvent insurer is not paid by a guaranty association or fund.
9514 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
9515 coverage for covered persons who are legally entitled to recover damages from owners or
9516 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.
9517 (b) For new policies written on or after January 1, 2001, the limits of uninsured
9518 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle
9519 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
9520 under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser
9521 amount by signing an acknowledgment form that:
9522 (i) is filed with the department;
9523 (ii) is provided by the insurer;
9524 (iii) waives the higher coverage;
9525 (iv) reasonably explains the purpose of uninsured motorist coverage; and
9526 (v) discloses the additional premiums required to purchase uninsured motorist
9527 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
9528 coverage or the maximum uninsured motorist coverage limits available by the insurer under the
9529 insured's motor vehicle policy.
9530 (c) A self-insured, including a governmental entity, may elect to provide uninsured
9531 motorist coverage in an amount that is less than its maximum self-insured retention under
9532 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from
9533 the chief financial officer or chief risk officer that declares the:
9534 (i) self-insured entity's coverage level; and
9535 (ii) process for filing an uninsured motorist claim.
9536 (d) Uninsured motorist coverage may not be sold with limits that are less than the
9537 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.
9538 (e) The acknowledgment under Subsection (3)(b) continues for that issuer of the
9539 uninsured motorist coverage until the insured, in writing, requests different uninsured motorist

9540 coverage from the insurer.
9541 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
9542 policies existing on that date, the insurer shall disclose in the same medium as the premium
9543 renewal notice, an explanation of:
9544 (A) the purpose of uninsured motorist coverage; and
9545 (B) the costs associated with increasing the coverage in amounts up to and including
9546 the maximum amount available by the insurer under the insured's motor vehicle policy.
9547 (ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds that
9548 carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle
9549 liability policy limits or the maximum uninsured motorist coverage limits available by the
9550 insurer under the insured's motor vehicle policy.
9551 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject
9552 uninsured motorist coverage by an express writing to the insurer that provides liability
9553 coverage under Subsection 31A-22-302(1)(a).
9554 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable
9555 explanation of the purpose of uninsured motorist coverage.
9556 (iii) This rejection continues for that issuer of the liability coverage until the insured in
9557 writing requests uninsured motorist coverage from that liability insurer.
9558 (b) (i) All persons, including governmental entities, that are engaged in the business of,
9559 or that accept payment for, transporting natural persons by motor vehicle, and all school
9560 districts that provide transportation services for their students, shall provide coverage for all
9561 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,
9562 uninsured motorist coverage of at least $25,000 per person and $500,000 per accident.
9563 (ii) This coverage is secondary to any other insurance covering an injured covered
9564 person.
9565 (c) Uninsured motorist coverage:
9566 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'
9567 Compensation Act;
9568 (ii) may not be subrogated by the workers' compensation insurance carrier;
9569 (iii) may not be reduced by any benefits provided by workers' compensation insurance;
9570 (iv) may be reduced by health insurance subrogation only after the covered person has

9571 been made whole;
9572 (v) may not be collected for bodily injury or death sustained by a person:
9573 (A) while committing a violation of Section 41-1a-1314;
9574 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
9575 in violation of Section 41-1a-1314; or
9576 (C) while committing a felony; and
9577 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
9578 (A) for a person under 18 years of age who is injured within the scope of Subsection
9579 (4)(c)(v) but limited to medical and funeral expenses; or
9580 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
9581 within the course and scope of the law enforcement officer's duties.
9582 (d) As used in this Subsection (4), "motor vehicle" has the same meaning as under
9583 Section 41-1a-102.
9584 (5) When a covered person alleges that an uninsured motor vehicle under Subsection
9585 (2)(b) proximately caused an accident without touching the covered person or the motor
9586 vehicle occupied by the covered person, the covered person [~~must~~] shall show the existence of
9587 the uninsured motor vehicle by clear and convincing evidence consisting of more than the
9588 covered person's testimony.
9589 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor
9590 vehicles may not be added together, combined, or stacked to determine the limit of insurance
9591 coverage available to an injured person for any one accident.
9592 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under
9593 Subsection (7)(b)(ii).
9594 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest
9595 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
9596 person is the named insured or an insured family member.
9597 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered
9598 person is occupying.
9599 (iv) Neither the primary nor the secondary coverage may be set off against the other.
9600 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
9601 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall

9602 be secondary coverage.
9603 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,
9604 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
9605 the motor vehicle is described in the policy under which a claim is made, or if the motor
9606 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.
9607 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a
9608 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
9609 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
9610 under which the person is a covered person.
9611 (b) Each of the following persons may also recover uninsured motorist benefits under
9612 any one other policy in which they are described as a "covered person" as defined in Subsection
9613 (1):
9614 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and
9615 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying
9616 or using a motor vehicle that is not owned, leased, or furnished:
9617 (A) to the covered person;
9618 (B) to the covered person's spouse; or
9619 (C) to the covered person's resident parent or resident sibling.
9620 (c) (i) A covered person may recover benefits from no more than two additional
9621 policies, one additional policy from each parent's household if the covered person is:
9622 (A) a dependent minor of parents who reside in separate households; and
9623 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
9624 furnished:
9625 (I) to the covered person;
9626 (II) to the covered person's resident parent; or
9627 (III) to the covered person's resident sibling.
9628 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of
9629 the damages that the limit of liability of each parent's policy of uninsured motorist coverage
9630 bears to the total of both parents' uninsured coverage applicable to the accident.
9631 (d) A covered person's recovery under any available policies may not exceed the full
9632 amount of damages.

9633 (e) A covered person in Subsection (7)(b) is not barred against making subsequent
9634 elections if recovery is unavailable under previous elections.
9635 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a
9636 single incident of loss under more than one insurance policy.
9637 (ii) Except to the extent permitted by Subsection (6) and this Subsection (7),
9638 interpolicy stacking is prohibited for uninsured motorist coverage.
9639 (8) (a) When a claim is brought by a named insured or a person described in
9640 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the
9641 claimant may elect to resolve the claim:
9642 (i) by submitting the claim to binding arbitration; or
9643 (ii) through litigation.
9644 (b) Unless otherwise provided in the policy under which uninsured benefits are
9645 claimed, the election provided in Subsection (8)(a) is available to the claimant only.
9646 (c) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),
9647 the claimant may not elect to resolve the claim through binding arbitration under this section
9648 without the written consent of the uninsured motorist carrier.
9649 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
9650 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.
9651 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).
9652 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
9653 (8)(d)(ii), the parties shall select a panel of three arbitrators.
9654 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):
9655 (i) each side shall select one arbitrator; and
9656 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional
9657 arbitrator to be included in the panel.
9658 (f) Unless otherwise agreed to in writing:
9659 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
9660 under Subsection (8)(d)(i); or
9661 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):
9662 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
9663 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected

9664 under Subsection (8)(e)(ii).
9665 (g) Except as otherwise provided in this section or unless otherwise agreed to in
9666 writing by the parties, an arbitration proceeding conducted under this section shall be governed
9667 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
9668 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
9669 68 of the Utah Rules of Civil Procedure.
9670 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.
9671 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
9672 shall constitute a final decision.
9673 (k) (i) The amount of an arbitration award may not exceed the uninsured motorist
9674 policy limits of all applicable uninsured motorist policies, including applicable uninsured
9675 motorist umbrella policies.
9676 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
9677 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
9678 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
9679 policies.
9680 (l) The arbitrator or arbitration panel may not decide the issues of coverage or
9681 extra-contractual damages, including:
9682 (i) whether the claimant is a covered person;
9683 (ii) whether the policy extends coverage to the loss; or
9684 (iii) any allegations or claims asserting consequential damages or bad faith liability.
9685 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
9686 class-representative basis.
9687 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,
9688 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
9689 and costs against the party that failed to bring, pursue, or defend the claim in good faith.
9690 (o) An arbitration award issued under this section shall be the final resolution of all
9691 claims not excluded by Subsection (8)(l) between the parties unless:
9692 (i) the award was procured by corruption, fraud, or other undue means; or
9693 (ii) either party, within 20 days after service of the arbitration award:
9694 (A) files a complaint requesting a trial de novo in the district court; and

9695 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
9696 under Subsection (8)(o)(ii)(A).
9697 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim
9698 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
9699 of Evidence in the district court.
9700 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
9701 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).
9702 (q) (i) If the claimant, as the moving party in a trial de novo requested under
9703 Subsection (8)(o), does not obtain a verdict that is at least $5,000 and is at least 20% greater
9704 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.
9705 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested
9706 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration
9707 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.
9708 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)
9709 shall include:
9710 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
9711 (B) the costs of expert witnesses and depositions.
9712 (iv) An award of costs under this Subsection (8)(q) may not exceed $2,500.
9713 (r) For purposes of determining whether a party's verdict is greater or less than the
9714 arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief
9715 granted on a claim for damages if the claim for damages:
9716 (i) was not fully disclosed in writing prior to the arbitration proceeding; or
9717 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
9718 Procedure.
9719 (s) If a district court determines, upon a motion of the nonmoving party, that the
9720 moving party's use of the trial de novo process was filed in bad faith in accordance with
9721 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving
9722 party.
9723 (t) Nothing in this section is intended to limit any claim under any other portion of an
9724 applicable insurance policy.
9725 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (7), the

9726 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
9727 carriers.
9728 (9) (a) Within 30 days after a covered person elects to submit a claim for uninsured
9729 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
9730 the uninsured motorist carrier:
9731 (i) a written demand for payment of uninsured motorist coverage benefits, setting forth:
9732 (A) the specific monetary amount of the demand; and
9733 (B) the factual and legal basis and any supporting documentation for the demand;
9734 (ii) a written statement under oath disclosing:
9735 (A) (I) the names and last known addresses of all health care providers who have
9736 rendered health care services to the covered person that are material to the claims for which
9737 uninsured motorist benefits are sought for a period of five years preceding the date of the event
9738 giving rise to the claim for uninsured motorist benefits up to the time the election for
9739 arbitration or litigation has been exercised; and
9740 (II) whether the covered person has seen other health care providers who have rendered
9741 health care services to the covered person, which the covered person claims are immaterial to
9742 the claims for which uninsured motorist benefits are sought, for a period of five years
9743 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
9744 time the election for arbitration or litigation has been exercised that have not been disclosed
9745 under Subsection (9)(a)(ii)(A)(I);
9746 (B) (I) the names and last known addresses of all health insurers or other entities to
9747 whom the covered person has submitted claims for health care services or benefits material to
9748 the claims for which uninsured motorist benefits are sought, for a period of five years
9749 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
9750 time the election for arbitration or litigation has been exercised; and
9751 (II) whether the identity of any health insurers or other entities to whom the covered
9752 person has submitted claims for health care services or benefits, which the covered person
9753 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a
9754 period of five years preceding the date of the event giving rise to the claim for uninsured
9755 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;
9756 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all

9757 employers of the covered person for a period of five years preceding the date of the event
9758 giving rise to the claim for uninsured motorist benefits up to the time the election for
9759 arbitration or litigation has been exercised;
9760 (D) other documents to reasonably support the claims being asserted; and
9761 (E) all state and federal statutory lienholders including a statement as to whether the
9762 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
9763 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
9764 or if the claim is subject to any other state or federal statutory liens; and
9765 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records
9766 and billings from the individuals or entities disclosed.
9767 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed
9768 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,
9769 the uninsured motorist carrier may:
9770 (A) make a request for the disclosure of the identity of the health care providers or
9771 health care insurers; and
9772 (B) make a request for authorizations to allow the uninsured motorist carrier to only
9773 obtain records and billings from the individuals or entities not disclosed.
9774 (ii) If the covered person does not provide the requested information within 10 days:
9775 (A) the covered person shall disclose, in writing, the legal or factual basis for the
9776 failure to disclose the health care providers or health care insurers; and
9777 (B) either the covered person or the uninsured motorist carrier may request the
9778 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be
9779 provided if the covered person has elected arbitration.
9780 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of
9781 the dispute concerning the disclosure and production of records of the health care providers or
9782 health care insurers.
9783 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice
9784 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection
9785 (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and
9786 receipt of the items specified in Subsections (9)(a)(i) through (iii), to:
9787 (A) provide a written response to the written demand for payment provided for in

9788 Subsection (9)(a)(i);
9789 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the
9790 uninsured motorist carrier's determination of the amount owed to the covered person; and
9791 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
9792 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
9793 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
9794 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed
9795 to the covered person less:
9796 (I) if the amount of the state or federal statutory lien is established, the amount of the
9797 lien; or
9798 (II) if the amount of the state or federal statutory lien is not established, two times the
9799 amount of the medical expenses subject to the state or federal statutory lien until such time as
9800 the amount of the state or federal statutory lien is established.
9801 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (9)(c)(i)
9802 is the total amount of the uninsured motorist policy limits, the tendered amount shall be
9803 accepted by the covered person.
9804 (d) A covered person who receives a written response from an uninsured motorist
9805 carrier as provided for in Subsection (9)(c)(i), may:
9806 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all
9807 uninsured motorist claims; or
9808 (ii) elect to:
9809 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all
9810 uninsured motorist claims; and
9811 (B) litigate or arbitrate the remaining claim.
9812 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i)
9813 as partial payment of all uninsured motorist claims, the final award obtained through
9814 arbitration, litigation, or later settlement shall be reduced by any payment made by the
9815 uninsured motorist carrier under Subsection (9)(c)(i).
9816 (f) In an arbitration proceeding on the remaining uninsured claims:
9817 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
9818 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

9819 (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits
9820 provided by the policy.
9821 (g) If the final award obtained through arbitration or litigation is greater than the
9822 average of the covered person's initial written demand for payment provided for in Subsection
9823 (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection
9824 (9)(c)(i), the uninsured motorist carrier shall pay:
9825 (i) the final award obtained through arbitration or litigation, except that if the award
9826 exceeds the policy limits of the subject uninsured motorist policy by more than $15,000, the
9827 amount shall be reduced to an amount equal to the policy limits plus $15,000; and
9828 (ii) any of the following applicable costs:
9829 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;
9830 (B) the arbitrator or arbitration panel's fee; and
9831 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
9832 evidence during arbitration or litigation.
9833 (h) (i) The covered person shall provide an affidavit of costs within five days of an
9834 arbitration award.
9835 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
9836 which the uninsured motorist carrier objects.
9837 (B) The objection shall be resolved by the arbitrator or arbitration panel.
9838 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)
9839 may not exceed $5,000.
9840 (i) (i) A covered person shall disclose all material information, other than rebuttal
9841 evidence, as specified in Subsection (9)(a).
9842 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
9843 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).
9844 (j) This Subsection (9) does not limit any other cause of action that arose or may arise
9845 against the uninsured motorist carrier from the same dispute.
9846 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
9847 occur on or after March 30, 2010.
9848 Section 256. Section **31A-22-408** is amended to read:
9849 **31A-22-408. Standard Nonforfeiture Law for Life Insurance.**

9850 (1) This section is known as the "Standard Nonforfeiture Law for Life Insurance." It
9851 does not apply to group life insurance.
9852 (2) In the case of policies issued on or after July 1, 1961, no policy of life insurance,
9853 except as stated in Subsection (8), may be delivered or issued for delivery in this state unless it
9854 contains in substance the following provisions, or corresponding provisions which in the
9855 opinion of the commissioner are at least as favorable to the defaulting or surrendering
9856 policyholder as are the minimum requirements hereinafter specified, and are essentially in
9857 compliance with Subsection (8):
9858 (a) That, in the event of default in any premium payment, after premiums have been
9859 paid for at least one full year the company will grant, upon proper request not later than 60 days
9860 after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated
9861 in the policy, effective as of such due date, of such amount as is specified in this section. In
9862 lieu of that stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper
9863 request not later than 60 days after the due date of the premium in default, an actuarially
9864 equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer
9865 period of death benefits or, if applicable, a greater amount or earlier payment of endowment
9866 benefits.
9867 (b) That, upon surrender of the policy within 60 days after the due date of any premium
9868 payment in default after premiums have been paid for at least three full years in the case of
9869 ordinary insurance or five full years in the case of industrial insurance, the company will pay,
9870 in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as is
9871 specified in this section.
9872 (c) That a specified paid-up nonforfeiture benefit shall become effective as specified in
9873 the policy unless the person entitled to make such election elects another available option not
9874 later than 60 days after the due date of the premium in default.
9875 (d) That, if the policy shall have been paid by the completion of all premium payments
9876 or if it is continued under any paid-up nonforfeiture benefit which became effective on or after
9877 the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in
9878 the case of industrial insurance, the company will pay upon surrender of the policy within 30
9879 days after any policy anniversary, a cash surrender value in the amount specified in this section.
9880 (e) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled

9881 changes in benefits or premiums, or which provide an option for changes in benefits or
9882 premiums other than a change to a new policy, a statement of the mortality table, interest rate,
9883 and method used in calculating cash surrender values and the paid-up nonforfeiture benefits
9884 available under the policy. In the case of all other policies, a statement of the mortality table
9885 and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture
9886 benefit, if any, available under the policy on each policy anniversary either during the first 20
9887 policy years or during the term of the policy, whichever is shorter, such values and benefits to
9888 be calculated upon the assumption that there are no dividends or paid-up additions credited to
9889 the policy and that there is no indebtedness to the company on the policy.
9890 (f) A statement that the cash surrender values and the paid-up nonforfeiture benefits
9891 available under the policy are not less than the minimum values and benefits required by or
9892 pursuant to the insurance law of the state in which the policy is delivered; an explanation of the
9893 manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by
9894 the existence of any paid-up additions credited to the policy or any indebtedness to the
9895 company on the policy; if a detailed statement of the method of computation of the values and
9896 benefits shown in the policy is not stated therein, a statement that such method of computation
9897 has been filed with the insurance supervisory official of the state in which the policy is
9898 delivered; and a statement of the method to be used in calculating the cash surrender value and
9899 paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the
9900 last anniversary for which such values and benefits are consecutively shown in the policy.
9901 Any of the foregoing provisions or portions thereof not applicable by reason of the plan
9902 of insurance may, to the extent inapplicable, be omitted from the policy.
9903 The company shall reserve the right to defer the payment of any cash surrender value
9904 for a period of six months after demand therefor with surrender of the policy with the consent
9905 of the commissioner; provided, however, that the policy shall remain in full force and effect
9906 until the insurer has made the payment.
9907 (3) Any cash surrender value available under the policy in the event of default in a
9908 premium payment due on any policy anniversary, whether or not required by Subsection (2),
9909 shall be an amount not less than the excess, if any, of the present value, on such anniversary, of
9910 the future guaranteed benefits which would have been provided for by the policy, including any
9911 existing paid-up additions, if there had been no default, over the sum of: (a) the then present

9912 value of the adjusted premiums as defined in Subsections (5) and (6), corresponding to
9913 premiums which would have fallen due on and after such anniversary, and (b) the amount of
9914 any indebtedness to the company on the policy.
9915 Provided, however, that for any policy issued on or after the operative date of
9916 Subsection (6)(d) as defined therein, which provides supplemental life insurance or annuity
9917 benefits at the option of the insured and for an identifiable additional premium by rider or
9918 supplemental policy provision, the cash surrender value referred to in the first paragraph of this
9919 subsection shall be an amount not less than the sum of the cash surrender value as defined in
9920 such paragraph for an otherwise similar policy issued at the same age without such rider or
9921 supplemental policy provision and the cash surrender value as defined in such paragraph for a
9922 policy which provides only the benefits otherwise provided by such rider or supplemental
9923 policy provision.
9924 Provided, further, that for any family policy issued on or after the operative date of
9925 Subsection (6)(d) as defined therein, which defines a primary insured and provides term
9926 insurance on the life of the spouse of the primary insured expiring before the spouse's age 71,
9927 the cash surrender value referred to in the first paragraph of this subsection shall be an amount
9928 not less than the sum of the cash surrender value as defined in such paragraph for an otherwise
9929 similar policy issued at the same age without such term insurance on the life of the spouse and
9930 the cash surrender value as defined in such paragraph for a policy which provides only the
9931 benefits otherwise provided by such term insurance on the life of the spouse. Any cash
9932 surrender value available within 30 days after any policy anniversary under any policy paid-up
9933 by completion of all premium payments or any policy continued under any paid-up
9934 nonforfeiture benefit, whether or not required by Subsection (2) shall be an amount not less
9935 than the present value, on such anniversary, of the future guaranteed benefits provided for by
9936 the policy, including any existing paid-up additions, decreased by any indebtedness to the
9937 company on the policy.
9938 (4) Any paid-up nonforfeiture benefit available under the policy in the event of default
9939 in a premium payment due on any policy anniversary shall be such that its present value as of
9940 such anniversary shall be at least equal to the cash surrender value then provided for by the
9941 policy or, if none is provided for, that cash surrender value which would have been required by
9942 this section in the absence of the condition that premiums shall have been paid for at least a

9943 specified period.
9944 (5) (a) This Subsection (5)(a) does not apply to policies issued on or after the operative
9945 date of Subsection (6)(d) as defined therein. Except as provided in Subsection (5)(c), the
9946 adjusted premiums for any policy shall be calculated on an annual basis and shall be such
9947 uniform percentage of the respective premiums specified in the policy for each policy year,
9948 excluding any extra premiums charged because of impairments or special hazards, that the
9949 present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to
9950 the sum of: (i) the then present value of the future guaranteed benefits provided for by the
9951 policy; (ii) 2% of the amount of insurance, if the insurance be uniform in amount, or of the
9952 equivalent uniform amount if the amount of insurance varies with duration of the policy; (iii)
9953 40% of the adjusted premium for the first policy year; and (iv) 25% of either the adjusted
9954 premium for the first policy year or the adjusted premium for a whole life policy of the same
9955 uniform or equivalent uniform amount with uniform premiums for the whole of life issued at
9956 the same age for the same amount of insurance, whichever is less. Provided, however, that in
9957 applying the percentages specified in Subsections (5)(a)(iii) and (iv), no adjusted premium
9958 shall be considered to exceed 4% of the amount of insurance or uniform amount equivalent
9959 thereto. The date of issue of a policy for the purpose of this section shall be the date as of
9960 which the rated age of the insured is determined.
9961 (b) In the case of a policy providing an amount of insurance varying with duration of
9962 the policy, the equivalent uniform amount thereof for the purpose of this section shall be
9963 considered to be the uniform amount of insurance provided by an otherwise similar policy,
9964 containing the same endowment benefit or benefits, if any, issued at the same age and for the
9965 same term, the amount of which does not vary with duration and the benefits under which have
9966 the same present value at the date of issue as the benefits under the policy; provided, however,
9967 that in the case of a policy providing a varying amount of insurance issued on the life of a child
9968 under age 10, the equivalent uniform amount may be computed as though the amount of
9969 insurance provided by the policy prior to the attainment of age 10 were the amount provided by
9970 such policy at age 10.
9971 (c) The adjusted premiums for any policy providing term insurance benefits by rider or
9972 supplemental policy provision shall be equal to: (i) the adjusted premiums for an otherwise
9973 similar policy issued at the same age without such term insurance benefits, increased, during

9974 the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted
9975 premiums for such term insurance, the foregoing items (i) and (ii) of this [~~paragraph~~]
9976 Subsection (5)(c) being calculated separately and as specified in Subsections (5)(a) and (b)
9977 except that, for the purposes of (ii), (iii), and (iv) of Subsection (5)(a), the amount of insurance
9978 or equivalent uniform amount of insurance used in calculation of the adjusted premiums
9979 referred to in (ii) of this [~~paragraph~~] Subsection (5)(c) shall be equal to the excess of the
9980 corresponding amount determined for the entire policy over the amount used in the calculation
9981 of the adjusted premiums in (i) of this [~~paragraph~~] Subsection (5)(c).
9982 (d) Except as otherwise provided in Subsection (6), all adjusted premiums and present
9983 values referred to in this section shall for all policies of ordinary insurance be calculated on the
9984 basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any
9985 category of ordinary insurance issued on female risks, adjusted premiums and present values
9986 may be calculated according to an age not more than three years younger than the actual age of
9987 the insured and such calculations for all policies of industrial insurance shall be made on the
9988 basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the
9989 basis of the rate of interest, not exceeding 3-1/2% per annum, specified in the policy for
9990 calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that
9991 in calculating the present value of any paid-up term insurance with accompanying pure
9992 endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be
9993 not more than 130% of the rates of mortality according to such applicable table. Provided,
9994 further, that for insurance issued on a substandard basis, the calculation of any such adjusted
9995 premiums and present values may be based on such other table of mortality as may be specified
9996 by the company and approved by the commissioner.
9997 (6) (a) This Subsection (6)(a) does not apply to ordinary policies issued on or after the
9998 operative date of Subsection (6)(d) as defined therein. In the case of ordinary policies issued
9999 on or after the operative date of Subsection (6)(a) as defined in Subsection (6)(b), all adjusted
10000 premiums and present values referred to in this section shall be calculated on the basis of the
10001 Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest as specified in
10002 the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided
10003 that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued
10004 before June 1, 1973, 4% per annum for policies issued on or after May 31, 1973, and before

10005 April 2, 1980, and the rate of interest [~~shall not~~] may not exceed 5-1/2% per annum for policies
10006 issued after April 2, 1980, except that for any single premium whole life or endowment
10007 insurance policy a rate of interest not exceeding 6-1/2% per annum may be used, and provided
10008 that for any category of ordinary insurance issued on female risks, adjusted premiums and
10009 present values may be calculated according to an age not more than six years younger than the
10010 actual age of the insured. Provided, however, that in calculating the present value of any
10011 paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture
10012 benefit, the rates of mortality assumed may be not more than those shown in the
10013 Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance
10014 issued on a substandard basis, the calculation of any such adjusted premiums and present
10015 values may be based on such other table of mortality as may be specified by the company and
10016 approved by the commissioner.
10017 (b) Any company may file with the commissioner a written notice of its election to
10018 comply with the provisions of Subsection (6)(a) after a specified date before January 1, 1966.
10019 After filing such notice, then upon such specified date, which is the operative date of
10020 Subsection (6)(a) for such company, this Subsection (6)(a) shall become operative with respect
10021 to the ordinary policies thereafter issued by such company. If a company makes no such
10022 election, the operative date of Subsection (6)(a) for such company is January 1, 1966.
10023 (c) This Subsection (6)(c) does not apply to industrial policies issued after the
10024 operative date of Subsection (6)(d) as defined therein. In the case of industrial policies issued
10025 on or after the operative date of this Subsection (6)(c) as defined herein, all adjusted premiums
10026 and present values referred to in this section shall be calculated on the basis of the
10027 Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in
10028 the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided
10029 that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued
10030 before June 1, 1973, 4% per annum for policies issued after May 31, 1973, and before April 2,
10031 1980, and 5-1/2% per annum for policies issued after April 2, 1980, except that for any single
10032 premium whole life or endowment insurance policy issued after April 2, 1980, a rate of interest
10033 not exceeding 6-1/2% per annum may be used. Provided, however, that in calculating the
10034 present value of any paid-up term insurance with accompanying pure endowment, if any,
10035 offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those

10036 shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided,
10037 further, that for insurance issued on a substandard basis, the calculation of any such adjusted
10038 premiums and present values may be based on such other table of mortality as may be specified
10039 by the company and approved by the commissioner.
10040 Any company may file with the commissioner a written notice of its election to comply
10041 with the provisions of this Subsection (6)(c) after a specified date before January 1, 1968.
10042 After filing such notice, then upon that specified date, which is the operative date of this
10043 Subsection (6) (c) for such company, this Subsection (6)(c) shall become operative with respect
10044 to the industrial policies thereafter issued by such company. If a company makes no such
10045 election, the operative date of this [~~paragraph~~] Subsection (6)(c) for such company shall be
10046 January 1, 1968.
10047 (d) (i) This Subsection (6)(d) applies to all policies issued on or after the operative date
10048 of this subsection as defined herein. Except as provided in Subsection (6)(d)(vii), the adjusted
10049 premiums for any policy shall be calculated on an annual basis and shall be such uniform
10050 percentage of the respective premiums specified in the policy for each policy year, excluding
10051 amounts payable as extra premiums to cover impairments or special hazards and also excluding
10052 any uniform annual contract charge or policy fee specified in the policy in a statement of the
10053 method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits,
10054 that the present value, at the date of issue of policy, of all adjusted premiums shall be equal to
10055 the sum of: (A) the then present value of the future guaranteed benefits provided for by the
10056 policy; (B) 1% of either the amount of insurance, if the insurance be uniform in amount, or the
10057 average amount of insurance at the beginning of each of the first 10 policy years; and (C) 125%
10058 of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in
10059 applying the percentage specified in (C), no nonforfeiture net level premium shall be
10060 considered to exceed 4% of either the amount of insurance, if the insurance be uniform in
10061 amount, or the average amount of insurance at the beginning of each of the first 10 policy
10062 years. The date of issue of a policy for the purpose of this subsection shall be the date as of
10063 which the rated age of the insured is determined.
10064 (ii) The nonforfeiture net level premium shall be equal to the present value, at the date
10065 of issue of the policy, of the guaranteed benefits provided for by the policy divided by the
10066 present value, at the date of issue of the policy, of an annuity of one per annum payable on the

10067 date of issue of the policy and on each anniversary of such policy on which a premium falls
10068 due.
10069 (iii) In the case of policies which cause on a basis guaranteed in the policy unscheduled
10070 changes in benefits or premiums, or which provide an option for changes in benefits or
10071 premiums other than change to a new policy, the adjusted premiums and present values shall
10072 initially be calculated on the assumption that future benefits and premiums do not change from
10073 those stipulated at the date of issue of the policy. At the time of any such change in the
10074 benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and
10075 present values shall be recalculated on the assumption that future benefits and premiums do not
10076 change from those stipulated by the policy immediately after the change.
10077 (iv) Except as otherwise provided in Subsection (6)(d)(vii), the recalculated future
10078 adjusted premiums for any such policy shall be such uniform percentage of the respective
10079 future premiums specified in the policy for each policy year, excluding amounts specified in
10080 the policy for each policy year, excluding amounts payable as extra premiums to cover
10081 impairments and special hazards, and also excluding any uniform annual contract charge or
10082 policy fee specified in the policy in a statement of the method to be used in calculating the cash
10083 surrender values and paid-up nonforfeiture benefits, that the present value, at the time of
10084 change to the newly defined benefits or premiums, of all such future adjusted premiums shall
10085 be equal to the excess of (A) the sum of: (I) the then present value of the then future guaranteed
10086 benefits provided for by the policy and (II) the additional expense allowance, if any, over (B)
10087 the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit
10088 under the policy.
10089 (v) The additional expense allowance, at the time of the change to the newly defined
10090 benefits or premiums, shall be the sum of: (A) 1% of the excess, if positive, of the average
10091 amount of insurance at the beginning of each of the first 10 policy years subsequent to the
10092 change over the average amount of insurance prior to the change at the beginning of each of the
10093 first 10 policy years subsequent to the time of the most recent previous change, or, if there has
10094 been no previous change, the date of issue of the policy; and (B) 125% of the increase, if
10095 positive, in the nonforfeiture net level premium.
10096 (vi) The recalculated nonforfeiture net level premium shall be equal to the result
10097 obtained by dividing (A) by (B) where

10098 (A) equals the sum of:
10099 (I) the nonforfeiture net level premium applicable prior to the change times the present
10100 value of an annuity of one per annum payable on each anniversary of the policy on or
10101 subsequent to the date of the change on which a premium would have fallen due had the
10102 change not occurred; and
10103 (II) the present value of the increase in future guaranteed benefits provided for by the
10104 policy; and
10105 (B) equals the present value of an annuity of one per annum payable on each
10106 anniversary of the policy on or subsequent to the date of change on which a premium falls due.
10107 (vii) Notwithstanding any other provision of this Subsection (6)(d) to the contrary, in
10108 the case of a policy issued on a substandard basis which provides reduced graded amounts of
10109 insurance so that, in each policy year, such policy has the same tabular mortality cost as an
10110 otherwise similar policy issued on the standard basis which provides higher uniform amounts
10111 of insurance, adjusted premiums and present values for such substandard policy may be
10112 calculated as if it were issued to provide such higher uniform amounts of insurance on the
10113 standard basis.
10114 (viii) All adjusted premiums and present values referred to in this section shall for all
10115 policies of ordinary insurance be calculated on the basis of: (A) the Commissioner's 1980
10116 Standard Ordinary Mortality Table; or (B) at the election of the company for any one or more
10117 specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table
10118 with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be
10119 calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table; and
10120 shall for all policies issued in a particular calendar year be calculated on the basis of a rate of
10121 interest not exceeding the nonforfeiture interest rate as defined in this subsection, for policies
10122 issued in that calendar year. Provided, however, that:
10123 (I) At the option of the company, calculations for all policies issued in a particular
10124 calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture
10125 interest rate, as defined in this subsection, for policies issued in the immediately preceding
10126 calendar year.
10127 (II) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions,
10128 any cash surrender value available, whether or not required by Subsection (2), shall be

10129 calculated on the basis of the mortality table and rate of interest used in determining the
10130 amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.
10131 (III) A company may calculate the amount of any guaranteed paid-up nonforfeiture
10132 benefit, including paid-up additions under the policy, on the basis of an interest rate no lower
10133 than that specified in the policy for calculating cash surrender values.
10134 (IV) In calculating the present value of any paid-up term insurance with accompanying
10135 pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may
10136 be not more than those shown in the Commissioner's 1980 Extended Term Insurance Table for
10137 policies of ordinary insurance and not more than the Commissioner's 1961 Industrial Extended
10138 Term Insurance Table for policies of industrial insurance.
10139 (V) For insurance issued on a substandard basis, the calculation of any such adjusted
10140 premiums and present values may be based on appropriate modifications of the aforementioned
10141 tables.
10142 (VI) Any ordinary mortality tables, adopted after 1980 by the National Association of
10143 Insurance Commissioners, that are approved by rules adopted by the commissioner for use in
10144 determining the minimum nonforfeiture standard, may be substituted for the Commissioner's
10145 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or
10146 for the Commissioner's 1980 Extended Term Insurance Table.
10147 (VII) Any industrial mortality tables, adopted after 1980 by the National Association of
10148 Insurance Commissioners, that are approved by rules adopted by the commissioner for use in
10149 determining the minimum nonforfeiture standard may be substituted for the Commissioner's
10150 1961 Industrial Extended Term Insurance Table.
10151 (ix) The nonforfeiture interest rate per annum for any policy issued in a particular
10152 calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for
10153 such policy as defined in the Standard Valuation Law, rounded to the nearest [~~1/4~~] one-fourth
10154 of 1%.
10155 (x) Notwithstanding any other provision in this title to the contrary, any refiling of
10156 nonforfeiture values or their methods of computation for any previously approved policy form
10157 which involves only a change in the interest rate or mortality table used to compute
10158 nonforfeiture values does not require refiling of any other provisions of that policy form.
10159 (xi) After the effective date of this Subsection (6)(d), any company may, at any time

10160 before January 1, 1989, file with the commissioner a written notice of its election to comply
10161 with the provisions of this subsection with regard to any number of plans of insurance after a
10162 specified date before January 1, 1989, which specified date shall be the operative date of this
10163 Subsection (6)(d) for the plan or plans, but if a company elects to make the provisions of this
10164 subsection operative before January 1, 1989, for fewer than all plans, the company [~~must~~] shall
10165 comply with rules adopted by the commissioner. There is no limit to the number of times this
10166 election may be made. If the company makes no such election, the operative date of this
10167 subsection for such company shall be January 1, 1989.
10168 (7) In the case of any plan of life insurance which provides for future premium
10169 determination, the amounts of which are to be determined by the insurance company based on
10170 the estimates of future experience, or in the case of any plan of life insurance which is of such
10171 nature that minimum values cannot be determined by the methods described in Subsection (2),
10172 (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d) herein, then:
10173 (a) the plan of life insurance shall satisfy the commissioner [~~must be satisfied~~] that the
10174 benefits provided under the plan are substantially as favorable to policyholders and insureds as
10175 the minimum benefits otherwise required by Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c),
10176 or (6)(d);
10177 (b) the plan of life insurance shall satisfy the commissioner [~~must be satisfied~~] that the
10178 benefits and the pattern of premiums of that plan are not such as to mislead prospective
10179 policyholders or insureds; and
10180 (c) the cash surrender values and paid-up nonforfeiture benefits provided by [~~such~~] the
10181 plan [~~must not~~] may not be less than the minimum values and benefits required for the plan
10182 computed by a method consistent with the principles of this Standard Nonforfeiture Law for
10183 Life Insurance, as determined by rules adopted by the commissioner.
10184 (8) Any cash surrender value and any paid-up nonforfeiture benefit, available under the
10185 policy in the event of default in a premium payment due at any time other than on the policy
10186 anniversary, shall be calculated with allowance for the lapse of time and the payment of
10187 fractional premiums beyond the last preceding policy anniversary. All values referred to in
10188 Subsections (3), (4), (5), and (6) of this section may be calculated upon the assumption that any
10189 death benefit is payable at the end of the policy year of death. The net value of any paid-up
10190 additions, other than paid-up term additions, may not be less than the amounts used to provide

10191 such additions. Notwithstanding the provisions of Subsection (3), additional benefits payable:
10192 (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of
10193 total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity
10194 benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to
10195 which, if issued as a separate policy, this section would not apply, (e) as term insurance on the
10196 life of a child or on the lives of children provided in a policy on the life of a parent of the child,
10197 if such term insurance expires before the child's age is 26, if uniform in amount after the child's
10198 age is one, and has not become paid-up by reason of the death of a parent of the child, and (f)
10199 as other policy benefits additional to life insurance endowment benefits, and premiums for all
10200 such additional benefits, shall be disregarded in ascertaining cash surrender values and
10201 nonforfeiture benefits required by this section, and no such additional benefits shall be required
10202 to be included in any paid-up nonforfeiture benefits.
10203 (9) This Subsection (9), in addition to all other applicable subsections of this section,
10204 applies to all policies issued on or after January 1, 1985. Any cash surrender value available
10205 under the policy in the event of default in a premium payment due on any policy anniversary
10206 shall be in an amount which does not differ by more than 2/10 of 1% of either the amount of
10207 insurance, if the insurance be uniform in amount, or the average amount of insurance at the
10208 beginning of each of the first 10 policy years, from the sum of: (a) the greater of zero and the
10209 basic cash value hereinafter specified, and (b) the present value of any existing paid-up
10210 additions less the amount of any indebtedness to the company under the policy.
10211 The basic cash value shall be equal to the present value, on such anniversary of the
10212 future guaranteed benefits which would have been provided for by the policy, excluding any
10213 existing paid-up additions and before deduction of any indebtedness to the company, if there
10214 had been no default, less the then present value of the nonforfeiture factors, as hereinafter
10215 defined, corresponding to premiums which would have fallen due on and after such
10216 anniversary. Provided, however, that the effects on the basic cash value of supplemental life
10217 insurance or annuity benefits or of family coverage, as described in Subsection (3) or (5),
10218 whichever is applicable, shall be the same as are the effects specified in Subsection (3) or (5),
10219 whichever is applicable, on the cash surrender values defined in that subsection.
10220 The nonforfeiture factor for each policy year shall be an amount equal to a percentage
10221 of the adjusted premium for the policy year, as defined in Subsection (5) or (6)(d), whichever is

10222 applicable. Except as is required by the next succeeding sentence of this paragraph, such
10223 percentage:
10224 (a) [~~must~~] shall be the same percentage for each policy year between the second policy
10225 anniversary and the later of: (i) the fifth policy anniversary and (ii) the first policy anniversary
10226 at which there is available under the policy a cash surrender value in an amount, before
10227 including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1%
10228 of either the amount of insurance, if the insurance be uniform in amount, or the average amount
10229 of insurance at the beginning of each of the first 10 policy years; and
10230 (b) [~~must~~] shall be such that no percentage after the later of the two policy
10231 anniversaries specified in Subsection (9)(a) may apply to fewer than five consecutive policy
10232 years.
10233 Provided, that no basic cash value may be less than the value which would be obtained
10234 if the adjusted premiums for the policy, as defined in Subsection (5) or Subsection (6)(d),
10235 whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the
10236 basic value.
10237 All adjusted premiums and present values referred to in this Subsection (9) shall for a
10238 particular policy be calculated on the same mortality and interest bases as are used in
10239 demonstrating the policy's compliance with the other subsections of this law. The cash
10240 surrender values referred to in this subsection shall include any endowment benefits provided
10241 for by the policy.
10242 Any cash surrender value available other than in the event of default in a premium
10243 payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit
10244 available under the policy in the event of default in a premium payment shall be determined in
10245 manners consistent with the manners specified for determining the analogous minimum
10246 amounts in Subsections (2), (3), (4), (5), (6), and (8). The amounts of any cash surrender
10247 values and of any paid-up nonforfeiture benefits granted in connection with additional benefits
10248 such as those listed as Subsections (8)(a) through (f) shall conform with the principles of this
10249 Subsection (9).
10250 (10) This section does not apply to any of the following:
10251 (a) reinsurance;
10252 (b) group insurance;

10253 (c) pure endowment;
10254 (d) an annuity or reversionary annuity contract;
10255 (e) a term policy of uniform amount, which provides no guaranteed nonforfeiture or
10256 endowment benefits, or renewal thereof, of 20 years or less expiring before age 71, for which
10257 uniform premiums are payable during the entire term of the policy;
10258 (f) a term policy of decreasing amount, which provides no guaranteed nonforfeiture or
10259 endowment benefits, on which each adjusted premium, calculated as specified in Subsections
10260 (5) and (6), is less than the adjusted premium so calculated, on a term policy of uniform
10261 amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment
10262 benefits, issued at the same age and for the same initial amount of insurance, and for a term of
10263 20 years or less expiring before age 71, for which uniform premiums are payable during the
10264 entire term of the policy;
10265 (g) a policy, which provides no guaranteed nonforfeiture or endowment benefits, for
10266 which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at
10267 the beginning of any policy year, calculated as specified in Subsections (3), (4), (5), and (6)
10268 exceeds 2-1/2% of the amount of insurance at the beginning of the same policy year; or
10269 (h) a policy which shall be delivered outside this state through an agent or other
10270 representative of the company issuing the policy.
10271 For purposes of determining the applicability of this section, the age of expiry for a
10272 joint term insurance policy shall be the age of expiry of the oldest life.
10273 (11) The commissioner may adopt rules interpreting, describing, and clarifying the
10274 application of this nonforfeiture law to any form of life insurance for which the interpretation,
10275 description, or clarification is [~~deemed~~] <u>considered</u> necessary by the commissioner, including
10276 [~~but not limited to,~~] unusual and new forms of life insurance.
10277 Section 257. Section **31A-22-610.5** is amended to read:
10278 **31A-22-610.5. Dependent coverage.**
10279 (1) As used in this section, "child" has the same meaning as defined in Section
10280 78B-12-102.
10281 (2) (a) Any individual or group accident and health insurance policy or health
10282 maintenance organization contract that provides coverage for a policyholder's or certificate
10283 holder's dependent may not terminate coverage of an unmarried dependent by reason of the

10284 dependent's age before the dependent's 26th birthday and shall, upon application, provide
10285 coverage for all unmarried dependents up to age 26.
10286 (b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be
10287 included in the premium on the same basis as other dependent coverage.
10288 (c) This section does not prohibit the employer from requiring the employee to pay all
10289 or part of the cost of coverage for unmarried dependents.
10290 (d) An individual health insurance policy, group health insurance policy, or health
10291 maintenance organization shall continue in force coverage for a dependent through the last day
10292 of the month in which the dependent ceases to be a dependent:
10293 (i) if premiums are paid; and
10294 (ii) notwithstanding Section 31A-8-402.3, 31A-8-402.5, 31A-22-721, 31A-30-107.1,
10295 or 31A-30-107.3.
10296 (3) An individual or group accident and health insurance policy or health maintenance
10297 organization contract shall reinstate dependent coverage, and for purposes of all exclusions and
10298 limitations, shall treat the dependent as if the coverage had been in force since it was
10299 terminated; if:
10300 (a) the dependent has not reached the age of 26 by July 1, 1995;
10301 (b) the dependent had coverage prior to July 1, 1994;
10302 (c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age
10303 of the dependent; and
10304 (d) the policy has not been terminated since the dependent's coverage was terminated.
10305 (4) (a) When a parent is required by a court or administrative order to provide health
10306 insurance coverage for a child, an accident and health insurer may not deny enrollment of a
10307 child under the accident and health insurance plan of the child's parent on the grounds the
10308 child:
10309 (i) was born out of wedlock and is entitled to coverage under Subsection (5);
10310 (ii) was born out of wedlock and the custodial parent seeks enrollment for the child
10311 under the custodial parent's policy;
10312 (iii) is not claimed as a dependent on the parent's federal tax return; or
10313 (iv) does not reside with the parent or in the insurer's service area.
10314 (b) A child enrolled as required under Subsection (4)(a)(iv) is subject to the terms of

10315 the accident and health insurance plan contract pertaining to services received outside of an
10316 insurer's service area. A health maintenance organization [~~must~~] shall comply with Section
10317 31A-8-502.
10318 (5) When a child has accident and health coverage through an insurer of a noncustodial
10319 parent, and when requested by the noncustodial or custodial parent, the insurer shall:
10320 (a) provide information to the custodial parent as necessary for the child to obtain
10321 benefits through that coverage, but the insurer or employer, or the agents or employees of either
10322 of them, are not civilly or criminally liable for providing information in compliance with this
10323 Subsection (5)(a), whether the information is provided pursuant to a verbal or written request;
10324 (b) permit the custodial parent or the service provider, with the custodial parent's
10325 approval, to submit claims for covered services without the approval of the noncustodial
10326 parent; and
10327 (c) make payments on claims submitted in accordance with Subsection (5)(b) directly
10328 to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid
10329 agency.
10330 (6) When a parent is required by a court or administrative order to provide health
10331 coverage for a child, and the parent is eligible for family health coverage, the insurer shall:
10332 (a) permit the parent to enroll, under the family coverage, a child who is otherwise
10333 eligible for the coverage without regard to an enrollment season restrictions;
10334 (b) if the parent is enrolled but fails to make application to obtain coverage for the
10335 child, enroll the child under family coverage upon application of the child's other parent, the
10336 state agency administering the Medicaid program, or the state agency administering 42 U.S.C.
10337 Sec. 651 through 669, the child support enforcement program; and
10338 (c) (i) when the child is covered by an individual policy, not disenroll or eliminate
10339 coverage of the child unless the insurer is provided satisfactory written evidence that:
10340 (A) the court or administrative order is no longer in effect; or
10341 (B) the child is or will be enrolled in comparable accident and health coverage through
10342 another insurer which will take effect not later than the effective date of disenrollment; or
10343 (ii) when the child is covered by a group policy, not disenroll or eliminate coverage of
10344 the child unless the employer is provided with satisfactory written evidence, which evidence is
10345 also provided to the insurer, that Subsection (9)(c)(i), (ii) or (iii) has happened.

10346 (7) An insurer may not impose requirements on a state agency that has been assigned
10347 the rights of an individual eligible for medical assistance under Medicaid and covered for
10348 accident and health benefits from the insurer that are different from requirements applicable to
10349 an agent or assignee of any other individual so covered.
10350 (8) Insurers may not reduce their coverage of pediatric vaccines below the benefit level
10351 in effect on May 1, 1993.
10352 (9) When a parent is required by a court or administrative order to provide health
10353 coverage, which is available through an employer doing business in this state, the employer
10354 shall:
10355 (a) permit the parent to enroll under family coverage any child who is otherwise
10356 eligible for coverage without regard to any enrollment season restrictions;
10357 (b) if the parent is enrolled but fails to make application to obtain coverage of the child,
10358 enroll the child under family coverage upon application by the child's other parent, by the state
10359 agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec.
10360 651 through 669, the child support enforcement program;
10361 (c) not disenroll or eliminate coverage of the child unless the employer is provided
10362 satisfactory written evidence that:
10363 (i) the court order is no longer in effect;
10364 (ii) the child is or will be enrolled in comparable coverage which will take effect no
10365 later than the effective date of disenrollment; or
10366 (iii) the employer has eliminated family health coverage for all of its employees; and
10367 (d) withhold from the employee's compensation the employee's share, if any, of
10368 premiums for health coverage and to pay this amount to the insurer.
10369 (10) An order issued under Section 62A-11-326.1 may be considered a "qualified
10370 medical support order" for the purpose of enrolling a dependent child in a group accident and
10371 health insurance plan as defined in Section 609(a), Federal Employee Retirement Income
10372 Security Act of 1974.
10373 (11) This section does not affect any insurer's ability to require as a precondition of any
10374 child being covered under any policy of insurance that:
10375 (a) the parent continues to be eligible for coverage;
10376 (b) the child shall be identified to the insurer with adequate information to comply with

10377 this section; and
10378 (c) the premium shall be paid when due.
10379 (12) The provisions of this section apply to employee welfare benefit plans as defined
10380 in Section 26-19-2.
10381 (13) The commissioner shall adopt rules interpreting and implementing this section
10382 with regard to out-of-area court ordered dependent coverage.
10383 Section 258. Section **31A-22-611** is amended to read:
10384 **31A-22-611. Coverage for children with a disability.**
10385 (1) For the purposes of this section:
10386 (a) "Disabled dependent" means a child who is and continues to be both:
10387 (i) unable to engage in substantial gainful employment to the degree that the child can
10388 achieve economic independence due to a medically determinable physical or mental
10389 impairment which can be expected to result in death, or which has lasted or can be expected to
10390 last for a continuous period of not less than 12 months; and
10391 (ii) chiefly dependent upon an insured for support and maintenance since the child
10392 reached the age specified in Subsection 31A-22-610.5(2).
10393 [~~(c)~~] (b) "Mental impairment" means a mental or psychological disorder such as:
10394 (i) mental retardation;
10395 (ii) organic brain syndrome;
10396 (iii) emotional or mental illness; or
10397 (iv) specific learning disabilities as determined by the insurer.
10398 [~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or
10399 disfigurement, or anatomical loss affecting one or more of the following body systems:
10400 (i) neurological;
10401 (ii) musculoskeletal;
10402 (iii) special sense organs;
10403 (iv) respiratory organs;
10404 (v) speech organs;
10405 (vi) cardiovascular;
10406 (vii) reproductive;
10407 (viii) digestive;

10408 (ix) genito-urinary;
10409 (x) hemic and lymphatic;
10410 (xi) skin; or
10411 (xii) endocrine.
10412 (2) The insurer may require proof of the incapacity and dependency be furnished by the
10413 person insured under the policy within 30 days of the effective date or the date the child attains
10414 the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the
10415 insurer may not require proof more often than annually after the two-year period immediately
10416 following attainment of the limiting age by the disabled dependent.
10417 (3) Any individual or group accident and health insurance policy or health maintenance
10418 organization contract that provides coverage for a policyholder's or certificate holder's
10419 dependent shall, upon application, provide coverage for all unmarried disabled dependents who
10420 have been continuously covered, with no break of more than 63 days, under any accident and
10421 health insurance since the age specified in Subsection 31A-22-610.5(2).
10422 (4) Every accident and health insurance policy or contract that provides coverage of a
10423 disabled dependent [~~shall not~~] may not terminate the policy due to an age limitation.
10424 Section 259. Section **31A-22-613.5** is amended to read:
10425 **31A-22-613.5. Price and value comparisons of health insurance -- Basic Health**
10426 **Care Plan.**
10427 (1) (a) This section applies to all health benefit plans.
10428 (b) Subsection (2) applies to:
10429 (i) all health benefit plans; and
10430 (ii) coverage offered to state employees under Subsection 49-20-202(1)(a).
10431 (2) (a) The commissioner shall promote informed consumer behavior and responsible
10432 health benefit plans by requiring an insurer issuing a health benefit plan to:
10433 (i) provide to all enrollees, prior to enrollment in the health benefit plan written
10434 disclosure of:
10435 (A) restrictions or limitations on prescription drugs and biologics including:
10436 (I) the use of a formulary;
10437 (II) co-payments and deductibles for prescription drugs; and
10438 (III) requirements for generic substitution;

10439 (B) coverage limits under the plan; and
10440 (C) any limitation or exclusion of coverage including:
10441 (I) a limitation or exclusion for a secondary medical condition related to a limitation or
10442 exclusion from coverage; and
10443 (II) easily understood examples of a limitation or exclusion of coverage for a secondary
10444 medical condition; and
10445 (ii) provide the commissioner with:
10446 (A) the information described in Subsections 63M-1-2506(3) through (6) in the
10447 standardized electronic format required by Subsection 63M-1-2506(1); and
10448 (B) information regarding insurer transparency in accordance with Subsection (5).
10449 (b) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to
10450 the commissioner:
10451 (i) upon commencement of operations in the state; and
10452 (ii) anytime the insurer amends any of the following described in Subsection (2)(a)(i):
10453 (A) treatment policies;
10454 (B) practice standards;
10455 (C) restrictions;
10456 (D) coverage limits of the insurer's health benefit plan or health insurance policy; or
10457 (E) limitations or exclusions of coverage including a limitation or exclusion for a
10458 secondary medical condition related to a limitation or exclusion of the insurer's health
10459 insurance plan.
10460 (c) An insurer shall provide the enrollee with notice of an increase in costs for
10461 prescription drug coverage due to a change in benefit design under Subsection (2)(a)(i)(A):
10462 (i) either:
10463 (A) in writing; or
10464 (B) on the insurer's website; and
10465 (ii) at least 30 days prior to the date of the implementation of the increase in cost, or as
10466 soon as reasonably possible.
10467 (d) If under Subsection (2)(a)(i)(A) a formulary is used, the insurer shall make
10468 available to prospective enrollees and maintain evidence of the fact of the disclosure of:
10469 (i) the drugs included;

10470 (ii) the patented drugs not included;
10471 (iii) any conditions that exist as a precedent to coverage; and
10472 (iv) any exclusion from coverage for secondary medical conditions that may result
10473 from the use of an excluded drug.
10474 (e) (i) The department shall develop examples of limitations or exclusions of a
10475 secondary medical condition that an insurer may use under Subsection (2)(a)(i)(C).
10476 (ii) Examples of a limitation or exclusion of coverage provided under Subsection
10477 (2)(a)(i)(C) or otherwise are for illustrative purposes only, and the failure of a particular fact
10478 situation to fall within the description of an example does not, by itself, support a finding of
10479 coverage.
10480 (3) An insurer who offers a health benefit plan under Chapter 30, Individual, Small
10481 Employer, and Group Health Insurance Act, shall offer a basic health care plan subject to the
10482 open enrollment provisions of Chapter 30, Individual, Small Employer, and Group Health
10483 Insurance Act, that:
10484 (a) is a federally qualified high deductible health plan;
10485 (b) has a deductible that is within $250 of the lowest deductible that qualifies under a
10486 federally qualified high deductible health plan, as adjusted by federal law; and
10487 (c) does not exceed an annual out of pocket maximum equal to three times the amount
10488 of the annual deductible.
10489 (4) The commissioner:
10490 (a) shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to
10491 the Health Insurance Exchange created under Section 63M-1-2504; and
10492 (b) may request information from an insurer to verify the information submitted by the
10493 insurer under this section.
10494 (5) The commissioner shall:
10495 (a) convene a group of insurers, a member representing the Public Employees' Benefit
10496 and Insurance Program, consumers, and an organization described in Subsection
10497 31A-22-614.6(3)(b), to develop information for consumers to compare health insurers and
10498 health benefit plans on the Health Insurance Exchange, which shall include consideration of:
10499 (i) the number and cost of an insurer's denied health claims;
10500 (ii) the cost of denied claims that is transferred to providers;

10501 (iii) the average out-of-pocket expenses incurred by participants in each health benefit
10502 plan that is offered by an insurer in the Health Insurance Exchange;
10503 (iv) the relative efficiency and quality of claims administration and other administrative
10504 processes for each insurer offering plans in the Health Insurance Exchange; and
10505 (v) consumer assessment of each insurer or health benefit plan;
10506 (b) adopt an administrative rule that establishes:
10507 (i) definition of terms;
10508 (ii) the methodology for determining and comparing the insurer transparency
10509 information;
10510 (iii) the data, and format of the data, that an insurer [~~must~~] shall submit to the
10511 department in order to facilitate the consumer comparison on the Health Insurance Exchange in
10512 accordance with Section 63M-1-2506; and
10513 (iv) the dates on which the insurer [~~must~~] shall submit the data to the department in
10514 order for the department to transmit the data to the Health Insurance Exchange in accordance
10515 with Section 63M-1-2506; and
10516 (c) implement the rules adopted under Subsection (5)(b) in a manner that protects the
10517 business confidentiality of the insurer.
10518 Section 260. Section **31A-22-618.5** is amended to read:
10519 **31A-22-618.5. Health benefit plan offerings.**
10520 (1) The purpose of this section is to increase the range of health benefit plans available
10521 in the small group, small employer group, large group, and individual insurance markets.
10522 (2) A health maintenance organization that is subject to Chapter 8, Health Maintenance
10523 Organizations and Limited Health Plans:
10524 (a) shall offer to potential purchasers at least one health benefit plan that is subject to
10525 the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;
10526 and
10527 (b) may offer to a potential purchaser one or more health benefit plans that:
10528 (i) are not subject to one or more of the following:
10529 (A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);
10530 (B) the limitation on point of service products in Subsections 31A-8-408(3) through
10531 (6);

10532 (C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in
10533 Section 31A-8-101; or
10534 (D) coverage mandates enacted after January 1, 2009 that are not required by federal
10535 law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate
10536 enacted after January 1, 2009; and
10537 (ii) when offering a health plan under this section, provide coverage for an emergency
10538 medical condition as required by Section 31A-22-627 as follows:
10539 (A) within the organization's service area, covered services shall include health care
10540 services from non-affiliated providers when medically necessary to stabilize an emergency
10541 medical condition; and
10542 (B) outside the organization's service area, covered services shall include medically
10543 necessary health care services for the treatment of an emergency medical condition that are
10544 immediately required while the enrollee is outside the geographic limits of the organization's
10545 service area.
10546 (3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health
10547 Maintenance Organizations and Limited Health Plans:
10548 (a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that
10549 groups providers into the following reimbursement levels:
10550 (i) tier one contracted providers;
10551 (ii) tier two contracted providers who the insurer [~~must~~] shall reimburse at least 75% of
10552 tier one providers; and
10553 (iii) one or more tiers of non-contracted providers; and
10554 (b) notwithstanding Subsection 31A-22-617(9) may offer a health benefit plan that is
10555 not subject to Section 31A-22-618;
10556 (c) beginning July 1, 2012, may offer products under Subsection (3)(a) that:
10557 (i) are not subject to Subsection 31A-22-617(2); and
10558 (ii) are subject to the reimbursement requirements in Section 31A-8-501;
10559 (d) when offering a health plan under this Subsection (3), shall provide coverage of
10560 emergency care services as required by Section 31A-22-627 by providing coverage at a
10561 reimbursement level of at least 75% of tier one providers; and
10562 (e) are not subject to coverage mandates enacted after January 1, 2009 that are not

10563 required by federal law, provided that an insurer offers one plan that covers a mandate enacted
10564 after January 1, 2009.
10565 (4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under
10566 Subsection (2)(b).
10567 (5) (a) Any difference in price between a health benefit plan offered under Subsections
10568 (2)(a) and (b) shall be based on actuarially sound data.
10569 (b) Any difference in price between a health benefit plan offered under Subsections
10570 (3)(a) and (b) shall be based on actuarially sound data.
10571 (6) Nothing in this section limits the number of health benefit plans that an insurer may
10572 offer.
10573 Section 261. Section **31A-22-625** is amended to read:
10574 **31A-22-625. Catastrophic coverage of mental health conditions.**
10575 (1) As used in this section:
10576 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan
10577 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or
10578 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden
10579 on an insured for the evaluation and treatment of a mental health condition than for the
10580 evaluation and treatment of a physical health condition.
10581 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing
10582 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum
10583 out-of-pocket limit.
10584 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
10585 limit for physical health conditions and another maximum out-of-pocket limit for mental health
10586 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit
10587 for mental health conditions may not exceed the out-of-pocket limit for physical health
10588 conditions.
10589 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that
10590 pays for at least 50% of covered services for the diagnosis and treatment of mental health
10591 conditions.
10592 (ii) "50/50 mental health coverage" may include a restriction on:
10593 (A) episodic limits;

10594 (B) inpatient or outpatient service limits; or
10595 (C) maximum out-of-pocket limits.
10596 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.
10597 (d) (i) "Mental health condition" means a condition or disorder involving mental illness
10598 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
10599 periodically revised.
10600 (ii) "Mental health condition" does not include the following when diagnosed as the
10601 primary or substantial reason or need for treatment:
10602 (A) a marital or family problem;
10603 (B) a social, occupational, religious, or other social maladjustment;
10604 (C) a conduct disorder;
10605 (D) a chronic adjustment disorder;
10606 (E) a psychosexual disorder;
10607 (F) a chronic organic brain syndrome;
10608 (G) a personality disorder;
10609 (H) a specific developmental disorder or learning disability; or
10610 (I) mental retardation.
10611 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.
10612 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer
10613 that it insures or seeks to insure a choice between catastrophic mental health coverage and
10614 50/50 mental health coverage.
10615 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:
10616 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
10617 that exceed the minimum requirements of this section; or
10618 (ii) coverage that excludes benefits for mental health conditions.
10619 (c) A small employer may, at its option, choose either catastrophic mental health
10620 coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b),
10621 regardless of the employer's previous coverage for mental health conditions.
10622 (d) An insurer is exempt from the 30% index rating restriction in Section
10623 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the
10624 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or

10625 less enrolled employees who chooses coverage that meets or exceeds catastrophic mental
10626 health coverage.
10627 (3) An insurer shall offer a large employer mental health and substance use disorder
10628 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.
10629 300gg-5, and federal regulations adopted pursuant to that act.
10630 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer
10631 through a managed care organization or system in a manner consistent with Chapter 8, Health
10632 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance
10633 policy uses a managed care organization or system for the treatment of physical health
10634 conditions.
10635 (b) (i) Notwithstanding any other provision of this title, an insurer may:
10636 (A) establish a closed panel of providers for catastrophic mental health coverage; and
10637 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider
10638 unless:
10639 (I) the insured is referred to a nonpanel provider with the prior authorization of the
10640 insurer; and
10641 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment
10642 guidelines.
10643 (ii) If an insured receives services from a nonpanel provider in the manner permitted by
10644 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the
10645 average amount paid by the insurer for comparable services of panel providers under a
10646 noncapitated arrangement who are members of the same class of health care providers.
10647 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a
10648 referral to a nonpanel provider.
10649 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a
10650 mental health condition [~~must~~] shall be rendered:
10651 (i) by a mental health therapist as defined in Section 58-60-102; or
10652 (ii) in a health care facility:
10653 (A) licensed or otherwise authorized to provide mental health services pursuant to:
10654 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or
10655 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

10656 (B) that provides a program for the treatment of a mental health condition pursuant to a
10657 written plan.
10658 (5) The commissioner may prohibit an insurance policy that provides mental health
10659 coverage in a manner that is inconsistent with this section.
10660 (6) The commissioner shall:
10661 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
10662 Rulemaking Act, as necessary to ensure compliance with this section; and
10663 (b) provide general figures on the percentage of insurance policies that include:
10664 (i) no mental health coverage;
10665 (ii) 50/50 mental health coverage;
10666 (iii) catastrophic mental health coverage; and
10667 (iv) coverage that exceeds the minimum requirements of this section.
10668 (7) This section may not be construed as discouraging or otherwise preventing an
10669 insurer from providing mental health coverage in connection with an individual insurance
10670 policy.
10671 (8) This section shall be repealed in accordance with Section 63I-1-231.
10672 Section 262. Section **31A-22-634** is amended to read:
10673 **31A-22-634. Prohibition against certain use of Social Security number --**
10674 **Exceptions -- Applicability of section.**
10675 (1) As used in this section:
10676 (a) "Insurer" means:
10677 (i) insurers governed by this part as described in Section 31A-22-600, and includes:
10678 (A) a health maintenance organization; and
10679 (B) a third-party administrator that is subject to this title; and
10680 (ii) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health,
10681 dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter
10682 20, Public Employees' Benefit and Insurance Program Act.
10683 (b) "Publicly display" or "publicly post" means to intentionally communicate or
10684 otherwise make available to the general public.
10685 (2) An insurer or its subcontractors, including a pharmacy benefit manager, [~~shall not~~]
10686 may not do any of the following:

10687 (a) publicly display or publicly post in any manner an individual's Social Security
10688 number; or
10689 (b) print an individual's Social Security number on any card required for the individual
10690 to access products or services provided or covered by the insurer.
10691 (3) This section does not prevent the collection, use, or release of a Social Security
10692 number as required by state or federal law, or the use of a Social Security number for internal
10693 verification or administrative purposes, or the release of a Social Security number to a health
10694 care provider for claims administration purposes, or as part of the verification, eligibility, or
10695 payment process.
10696 (4) If a federal law takes effect requiring the United States Department of Health and
10697 Human Services to establish a national unique patient health identifier program, an insurer that
10698 complies with the federal law shall be considered in compliance with this section.
10699 (5) An insurer [~~must~~] shall comply with the provisions of this section by July 1, 2004.
10700 (6) (a) An insurer may obtain an extension for compliance with the requirements of this
10701 section in accordance with Subsections (6)(b) and (c).
10702 (b) The request for extension:
10703 (i) [~~must~~] shall be submitted in writing to the department prior to July 1, 2004; and
10704 (ii) [~~must~~] shall provide an explanation as to why the insurer cannot comply with the
10705 requirements of this section by July 1, 2004.
10706 (c) The commissioner shall grant a request for extension:
10707 (i) for a period of time not to exceed March 1, 2005; and
10708 (ii) if the commissioner finds that the explanation provided under Subsection (6)(b)(ii)
10709 is a reasonable explanation.
10710 Section 263. Section **31A-22-636** is amended to read:
10711 **31A-22-636. Standardized health benefit plan cards.**
10712 (1) As used in this section, "insurer" means:
10713 (a) an insurer governed by this part as described in Section 31A-22-600;
10714 (b) a health maintenance organization governed by Chapter 8, Health Maintenance
10715 Organizations and Limited Health Benefit Plans;
10716 (c) a third party administrator; and
10717 (d) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health,

10718 medical, or conversion policy offered under Title 49, Chapter 20, Public Employees' Benefit
10719 and Insurance Program Act.
10720 (2) In accordance with Subsection (3), an insurer [~~must~~] shall use and issue a health
10721 benefit plan information card for the insurer's enrollees upon the purchase or renewal of, or
10722 enrollment in, a health benefit plan on or after July 1, 2010.
10723 (3) The health benefit plan card shall include:
10724 (a) the covered person's name;
10725 (b) the name of the carrier and the carrier network name;
10726 (c) the contact information for the carrier or health benefit plan administrator;
10727 (d) general information regarding copayments and deductibles; and
10728 (e) an indication of whether the health benefit plan is regulated by the state.
10729 (4) (a) The commissioner shall work with the Department of Health, the Health Data
10730 Authority, health care providers groups, and with state and national organizations that are
10731 developing uniform standards for the electronic exchange of health insurance claims or
10732 uniform standards for the electronic exchange of clinical health records.
10733 (b) When the commissioner determines that the groups described in Subsection (4)(a)
10734 have reached a consensus regarding the electronic technology and standards necessary to
10735 electronically exchange insurance enrollment and coverage information, the commissioner
10736 shall begin the rulemaking process under Title 63G, Chapter 3, Utah Administrative
10737 Rulemaking Act, to adopt standardized electronic interchange technology.
10738 (c) After rules are adopted under Subsection (4)(a), health care providers and their
10739 licensing boards under Title 58, Occupations and Professions, and health facilities licensed
10740 under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, shall work
10741 together to implement the adoption of card swipe technology.
10742 Section 264. Section **31A-22-637** is amended to read:
10743 **31A-22-637. Health care provider payment information -- Notice of admissions.**
10744 (1) For purposes of this section, "insurer" is as defined in Section 31A-22-636.
10745 (2) (a) An insurer shall provide its health care providers who are under contract with
10746 the insurer access to current information necessary for the health care provider to determine:
10747 (i) the effect of procedure codes on payment or compensation before a claim is
10748 submitted for a procedure;

10749 (ii) the plans and carrier networks that the health care provider is subject to as part of
10750 the contract with the carrier; and
10751 (iii) in accordance with Subsection 31A-26-301.6(10)(f), the specific rate and terms
10752 under which the provider will be paid for health care services.
10753 (b) The information required by Subsection (2)(a) may be provided through a website,
10754 and if requested by the health care provider, notice of the updated website shall be provided by
10755 the carrier.
10756 (3) (a) An insurer [~~shall not~~] may not require a health care provider by contract,
10757 reimbursement procedure, or otherwise to notify the insurer of a hospital in-patient emergency
10758 admission within a period of time that is less than one business day of the hospital in-patient
10759 admission, if compliance with the notification requirement would result in notification by the
10760 health care provider on a weekend or federal holiday.
10761 (b) Subsection (3)(a) does not prohibit the applicability or administration of other
10762 contract provisions between an insurer and a health care provider that require pre-authorization
10763 for scheduled in-patient admissions.
10764 Section 265. Section **31A-22-716** is amended to read:
10765 **31A-22-716. Required provision for notice of termination.**
10766 (1) Every policy for group or blanket accident and health coverage issued or renewed
10767 after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior
10768 written notice of termination to each employee or group member and to notify each employee
10769 or group member of [~~his~~] the employee's or group member's rights to continue coverage upon
10770 termination.
10771 (2) An insurer's monthly notice to the policyholder of premium payments due shall
10772 include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers
10773 shall provide a sample notice to the policyholder at least once a year.
10774 (3) For the purpose of compliance with federal law and the Health Insurance Portability
10775 and Accountability Act, P.L. No. 104-191, 110 Stat. 1960, all health benefit plans, health
10776 insurers, and student health plans [~~must~~] shall provide a certificate of creditable coverage to
10777 each covered person upon the person's termination from the plan as soon as reasonably
10778 possible.
10779 Section 266. Section **31A-22-722.5** is amended to read:

10780 **31A-22-722.5. Mini-COBRA election -- American Recovery and Reinvestment**
10781 **Act.**
10782 (1) (a) If the provisions of Subsection (1)(b) are met, an individual has a right to
10783 contact the individual's employer or the insurer for the employer to participate in a transition
10784 period for mini-COBRA benefits under Section 31A-22-722 in accordance with Section 3001
10785 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.
10786 (b) An individual has the right under Subsection (1)(a) if the individual:
10787 (i) was involuntarily terminated from employment during the period of time identified
10788 in Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as
10789 amended;
10790 (ii) is eligible for COBRA premium assistance under Section 3001 of the American
10791 Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;
10792 (iii) was eligible for Utah mini-COBRA as provided in Section 31A-22-722 at the time
10793 of termination;
10794 (iv) elected Utah mini-Cobra; and
10795 (v) voluntarily dropped coverage, which includes dropping coverage through
10796 non-payment of premiums, between December 1, 2009 and February 1, 2010.
10797 (2) (a) An individual or the employer of the individual shall contact the insurer and
10798 inform the insurer that the individual wants to maintain coverage and pay retroactive premiums
10799 under a transition period for mini-COBRA coverage in accordance with the provisions of
10800 Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as
10801 amended.
10802 (b) An individual or an employer on behalf of an eligible individual [~~must~~] shall
10803 submit the applicable forms and premiums for coverage under Subsection (1) to the insurer in
10804 accordance with the provisions of Section 3001 of the American Recovery and Reinvestment
10805 Act of 2009 (Pub. L. 11-5), as amended.
10806 (3) An insured has the right to extend the employee's coverage under mini-cobra with
10807 the current employer's group policy beyond the 12 months to the period of time the insured is
10808 eligible to receive assistance in accordance with Section 3001 of the American Recovery and
10809 Reinvestment Act of 2009 (Pub. L. 111-5) as amended.
10810 (4) An insurer that violates this section is subject to penalties in accordance with

10811 Section 31A-2-308.
10812 Section 267. Section **31A-22-723** is amended to read:
10813 **31A-22-723. Group and blanket conversion coverage.**
10814 (1) Notwithstanding Subsection 31A-1-103(3)(f), and except as provided in Subsection
10815 (3), all policies of accident and health insurance offered on a group basis under this title, or
10816 Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act, shall provide that
10817 a person whose insurance under the group policy has been terminated is entitled to choose a
10818 converted individual policy in accordance with this section and Section 31A-22-724.
10819 (2) A person who has lost group coverage may elect conversion coverage with the
10820 insurer that provided prior group coverage if the person:
10821 (a) has been continuously covered for a period of three months by the group policy or
10822 the group's preceding policies immediately prior to termination;
10823 (b) has exhausted either:
10824 (i) Utah mini-COBRA coverage as required in Section 31A-22-722;
10825 (ii) federal COBRA coverage; or
10826 (iii) alternative coverage under Section 31A-22-724;
10827 (c) has not acquired or is not covered under any other group coverage that covers all
10828 preexisting conditions, including maternity, if the coverage exists; and
10829 (d) resides in the insurer's service area.
10830 (3) This section does not apply if the person's prior group coverage:
10831 (a) is a stand alone policy that only provides one of the following:
10832 (i) catastrophic benefits;
10833 (ii) aggregate stop loss benefits;
10834 (iii) specific stop loss benefits;
10835 (iv) benefits for specific diseases;
10836 (v) accidental injuries only;
10837 (vi) dental; or
10838 (vii) vision;
10839 (b) is an income replacement policy;
10840 (c) was terminated because the insured:
10841 (i) failed to pay any required individual contribution;

10842 (ii) performed an act or practice that constitutes fraud in connection with the coverage;
10843 or
10844 (iii) made intentional misrepresentation of material fact under the terms of coverage; or
10845 (d) was terminated pursuant to Subsection 31A-8-402.3(2)(a), 31A-22-721(2)(a), or
10846 31A-30-107(2)(a).
10847 (4) (a) The employer shall provide written notification of the right to an individual
10848 conversion policy within 30 days of the insured's termination of coverage to:
10849 (i) the terminated insured;
10850 (ii) the ex-spouse; or
10851 (iii) in the case of the death of the insured:
10852 (A) the surviving spouse; and
10853 (B) the guardian of any dependents, if different from a surviving spouse.
10854 (b) The notification required by Subsection (4)(a) shall:
10855 (i) be sent by first class mail;
10856 (ii) contain the name, address, and telephone number of the insurer that will provide
10857 the conversion coverage; and
10858 (iii) be sent to the insured's last-known address as shown on the records of the
10859 employer of:
10860 (A) the insured;
10861 (B) the ex-spouse; and
10862 (C) if the policy terminates by reason of the death of the insured to:
10863 (I) the surviving spouse; and
10864 (II) the guardian of any dependents, if different from a surviving spouse.
10865 (5) (a) An insurer is not required to issue a converted policy which provides benefits in
10866 excess of those provided under the group policy from which conversion is made.
10867 (b) Except as provided in Subsection (5)(c), if the conversion is made from a health
10868 benefit plan, the employee or member shall be offered:
10869 (i) at least the basic benefit plan as provided in Section 31A-22-613.5 through
10870 December 31, 2009; and
10871 (ii) beginning January 1, 2010, only the alternative coverage as provided in Subsection
10872 31A-22-724(1)(a).

10873 (c) If the benefit levels required under Subsection (5)(b) exceed the benefit levels
10874 provided under the group policy, the conversion policy may offer benefits which are
10875 substantially similar to those provided under the group policy.
10876 (6) Written application for the converted policy shall be made and the first premium
10877 paid to the insurer no later than 60 days after termination of the group accident and health
10878 insurance.
10879 (7) The converted policy shall be issued without evidence of insurability.
10880 (8) (a) The initial premium for the converted policy for the first 12 months and
10881 subsequent renewal premiums shall be determined in accordance with premium rates
10882 applicable to age, class of risk of the person, and the type and amount of insurance provided.
10883 (b) The initial premium for the first 12 months may not be raised based on pregnancy
10884 of a covered insured.
10885 (c) The premium for converted policies shall be payable monthly or quarterly as
10886 required by the insurer for the policy form and plan selected, unless another mode or premium
10887 payment is mutually agreed upon.
10888 (9) The converted policy becomes effective at the time the insurance under the group
10889 policy terminates.
10890 (10) (a) A newly issued converted policy covers the employee or the member and
10891 [~~must~~] shall also cover all dependents covered by the group policy at the date of termination of
10892 the group coverage.
10893 (b) The only dependents that may be added after the policy has been issued are children
10894 and dependents as required by Section 31A-22-610 and Subsections 31A-22-610.5(6) and (7).
10895 (c) At the option of the insurer, a separate converted policy may be issued to cover any
10896 dependent.
10897 (11) (a) To the extent the group policy provided maternity benefits, the conversion
10898 policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group
10899 policy or the conversion policy until termination of a pregnancy that exists on the date of
10900 conversion if one of the following is pregnant on the date of the conversion:
10901 (i) the insured;
10902 (ii) a spouse of the insured; or
10903 (iii) a dependent of the insured.

10904 (b) The requirements of this Subsection (11) do not apply to a pregnancy that occurs
10905 after the date of conversion.
10906 (12) Except as provided in this Subsection (12), a converted policy is renewable with
10907 respect to all individuals or dependents at the option of the insured. An insured may be
10908 terminated from a converted policy for the following reasons:
10909 (a) a dependent is no longer eligible under the policy;
10910 (b) for a network plan, if the individual no longer lives, resides, or works in:
10911 (i) the insured's service area; or
10912 (ii) the area for which the covered carrier is authorized to do business;
10913 (c) the individual fails to pay premiums or contributions in accordance with the terms
10914 of the converted policy, including any timeliness requirements;
10915 (d) the individual performs an act or practice that constitutes fraud in connection with
10916 the coverage;
10917 (e) the individual makes an intentional misrepresentation of material fact under the
10918 terms of the coverage; or
10919 (f) coverage is terminated uniformly without regard to any health status-related factor
10920 relating to any covered individual.
10921 (13) Conditions pertaining to health may not be used as a basis for classification under
10922 this section.
10923 (14) An insurer is only required to offer a conversion policy that complies with
10924 Subsection 31A-22-724(1)(b) and, notwithstanding Sections 31A-8-402.5 and 31A-30-107.1,
10925 may discontinue any other conversion policy if:
10926 (a) the discontinued conversion policy is discontinued uniformly without regard to any
10927 health related factor;
10928 (b) any affected individual is provided with 90 days' advanced written notice of the
10929 discontinuation of the existing conversion policy;
10930 (c) the policy holder is offered the insurer's conversion policy that complies with
10931 Subsection 31A-22-724(1)(b); and
10932 (d) the policy holder is not re-rated for purposes of premium calculation.
10933 Section 268. Section **31A-22-806** is amended to read:
10934 **31A-22-806. Provisions of policies and certificates.**

10935 (1) All credit life insurance and credit accident and health insurance shall be evidenced
10936 by an individual policy, or, in the case of group insurance, by a certificate of insurance
10937 delivered to the debtor.
10938 (2) Each of these types of policies or certificates shall, in addition to satisfying the
10939 requirements of Chapter 21, Underwriting Restrictions set forth:
10940 (a) the name and home office address of the insurer;
10941 (b) the identity, by name or otherwise, of the persons insured;
10942 (c) the rate, premium, or amount of payment by the debtor, if any, given separately for
10943 credit life insurance and credit accident and health insurance;
10944 (d) a description of the amount, term, and coverage, including any exceptions,
10945 limitations, and restrictions;
10946 (e) that the benefits shall be paid to the creditor to reduce or extinguish the unpaid
10947 indebtedness; and
10948 (f) that whenever the amount of insurance exceeds the unpaid indebtedness, that excess
10949 is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.
10950 (3) Except as provided in Subsection (4), the policy or certificate shall be delivered to
10951 the debtor within 30 days after the date when the indebtedness is incurred.
10952 (4) (a) If the policy or certificate is not delivered to the debtor within 30 days after the
10953 date the indebtedness is incurred, a copy of the application for the policy or a notice of
10954 proposed insurance shall be delivered to the debtor.
10955 (b) The application or the notice shall be signed by the debtor and shall set forth:
10956 (i) the name and home office address of the insurer;
10957 (ii) the name of the debtor;
10958 (iii) the premium or amount of payment by the debtor, if any, separately for credit life
10959 insurance and credit accident and health insurance; and
10960 (iv) the amount, term, and a brief description of the coverage provided.
10961 (c) The copy of the application for or notice of proposed insurance, shall also refer
10962 exclusively to insurance coverage, and shall be separate from the loan, sale, or other credit
10963 statement of account or instrument, unless the information required by this Subsection (4)(c) is
10964 prominently set forth therein.
10965 (d) Upon acceptance of the insurance by the insurer and within 60 days after the later

10966 of the date on which the indebtedness is incurred or the date on which the credit life or credit
10967 accident and health policy was purchased, the insurer shall deliver the individual policy or
10968 group certificate of insurance to the debtor.
10969 (e) The application or notice shall state that upon acceptance by the insurer, the
10970 insurance is effective as provided in Section 31A-22-805.
10971 (5) If the named insurer does not accept the risk, the debtor shall receive a policy or
10972 certificate of insurance setting forth the name and home office address of the substituted
10973 insurer and the amount of the premium to be charged. If the premium is less than that set forth
10974 in the notice of proposed insurance, an appropriate refund shall be made.
10975 (6) If a creditor makes available to the debtors more than one plan of credit life or
10976 credit accident and health insurance, all debtors [~~must~~] shall be informed of the plans
10977 applicable to the specific type of loan transaction for which the debtor is applying.
10978 Section 269. Section **31A-22-1406** is amended to read:
10979 **31A-22-1406. Preexisting conditions.**
10980 (1) A long-term care insurance policy or certificate [~~shall not~~] may not use a definition
10981 of a preexisting condition which is more restrictive than the following: "Preexisting condition
10982 means a condition for which medical advice or treatment was recommended by or received
10983 from a provider of health care services, within six months preceding the effective date of
10984 coverage of an insured person."
10985 (2) A long-term care insurance policy or certificate may not exclude coverage for a loss
10986 or confinement which is the result of a preexisting condition unless such loss or confinement
10987 begins within six months following the effective date of coverage of an insured person.
10988 (3) The commissioner may extend the preexisting condition periods provided in
10989 Subsections (1) and (2) as to specific age group categories in specific policy forms upon
10990 finding that the extension is in the best interest of the public.
10991 (4) (a) The definition of preexisting condition does not prohibit an insurer from using
10992 an application form designed to elicit the complete health history of an applicant and from
10993 underwriting in accordance with that insurer's established underwriting standards on the basis
10994 of the answers on that application.
10995 (b) Unless otherwise provided in the policy or certificate, a preexisting condition,
10996 regardless of whether it is disclosed on the application, need not be covered until the waiting

10997 period described in Subsection (2) expires.
10998 (c) A long-term care insurance policy or certificate may not exclude or use waivers or
10999 riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or
11000 described preexisting diseases or physical condition beyond the waiting period described in
11001 Subsection (2).
11002 Section 270. Section **31A-22-1409** is amended to read:
11003 **31A-22-1409. Statements of coverage.**
11004 (1) An outline of coverage shall be delivered to a prospective applicant for long-term
11005 care insurance at the time of initial solicitation through means which prominently direct the
11006 attention of the applicant to the document and its purpose.
11007 (2) The commissioner may prescribe a standard format of an outline of coverage,
11008 including style, arrangement, and overall appearance, and the content.
11009 (3) In the case of agent solicitations an agent [~~must~~] shall deliver the outline of
11010 coverage prior to the presentation of any application or enrollment form.
11011 (4) In the case of direct response solicitations, the outline of coverage [~~must~~] shall be
11012 presented in conjunction with any application or enrollment form.
11013 (5) An outline of coverage under this section shall include:
11014 (a) a description of the principal benefits and coverage provided in the policy;
11015 (b) a statement of the principal exclusions, reductions, and limitations contained in the
11016 policy;
11017 (c) a statement of the terms under which the policy or certificate, or both, may be
11018 continued in force or discontinued, including any reservation in the policy of a right to change
11019 premium;
11020 (d) a specific description of continuation or conversion provisions of group coverage;
11021 (e) a statement that the outline of coverage is not a contract of insurance but a summary
11022 only and that the policy or group master policy contains governing contractual provisions;
11023 (f) a description of the terms under which the policy or certificate may be returned and
11024 premium refunded;
11025 (g) a brief description of the relationship of cost of care and benefits; and
11026 (h) a statement that discloses to the policyholder or certificate holder whether the
11027 policy is intended to be a federally tax-qualified, long-term care insurance contract under

11028 Section 7702B(b), Internal Revenue Code.
11029 (6) A certificate issued pursuant to a group long-term care insurance policy, which
11030 policy is delivered or issued for delivery in this state, shall include:
11031 (a) a description of the principal benefits and coverage provided in the policy;
11032 (b) a statement of the principal exclusions, reductions, and limitations contained in the
11033 policy;
11034 (c) a statement that the group master policy determines governing contractual
11035 provisions; and
11036 (d) a statement that any long-term care inflation protection option required by rule is
11037 not available under the policy.
11038 (7) If an application for a long-term care contract or certificate is approved, the issuer
11039 shall deliver the contract or certificate of insurance to the applicant no later than 30 days after
11040 the date of approval.
11041 (8) At the time of policy delivery, a policy summary shall be delivered for an
11042 individual life insurance policy which provides long-term care benefits within the policy or by
11043 rider. In the case of direct response solicitations, the insurer shall deliver the policy summary
11044 upon the applicant's request. However, the insurer shall deliver the summary to the applicant no
11045 later than at the time of policy delivery regardless of request. In addition to complying with all
11046 applicable requirements, the summary shall also include:
11047 (a) an explanation of how the long-term care benefit interacts with other components of
11048 the policy, including deductions from death benefits;
11049 (b) an illustration for each covered person of the amount of benefits, the length of
11050 benefit, and the guaranteed lifetime benefits if any;
11051 (c) any exclusions, reductions, and limitations on benefits of long-term care; and
11052 (d) if applicable to the policy type, the summary shall also include:
11053 (i) a disclosure of the effects of exercising other rights under the policy;
11054 (ii) a disclosure of guarantees related to long-term care costs of insurance charges; and
11055 (iii) current and projected maximum lifetime benefits.
11056 (9) The provisions of the policy summary required under Subsection (8) may be
11057 incorporated into:
11058 (a) a basic illustration; or

11059 (b) the life insurance policy summary required to be delivered in accordance with rule.
11060 Section 271. Section **31A-23a-501** is amended to read:
11061 **31A-23a-501. Licensee compensation.**
11062 (1) As used in this section:
11063 (a) "Commission compensation" includes funds paid to or credited for the benefit of a
11064 licensee from:
11065 (i) commission amounts deducted from insurance premiums on insurance sold by or
11066 placed through the licensee; or
11067 (ii) commission amounts received from an insurer or another licensee as a result of the
11068 sale or placement of insurance.
11069 (b) (i) "Compensation from an insurer or third party administrator" means
11070 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,
11071 gifts, prizes, or any other form of valuable consideration:
11072 (A) whether or not payable pursuant to a written agreement; and
11073 (B) received from:
11074 (I) an insurer; or
11075 (II) a third party to the transaction for the sale or placement of insurance.
11076 (ii) "Compensation from an insurer or third party administrator" does not mean
11077 compensation from a customer that is:
11078 (A) a fee or pass-through costs as provided in Subsection (1)(e); or
11079 (B) a fee or amount collected by or paid to the producer that does not exceed an
11080 amount established by the commissioner by administrative rule.
11081 (c) (i) "Customer" means:
11082 (A) the person signing the application or submission for insurance; or
11083 (B) the authorized representative of the insured actually negotiating the placement of
11084 insurance with the producer.
11085 (ii) "Customer" does not mean a person who is a participant or beneficiary of:
11086 (A) an employee benefit plan; or
11087 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or
11088 negotiated by the producer or affiliate.
11089 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the

11090 benefit of a licensee other than commission compensation.
11091 (ii) "Noncommission compensation" does not include charges for pass-through costs
11092 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.
11093 (e) "Pass-through costs" include:
11094 (i) costs for copying documents to be submitted to the insurer; and
11095 (ii) bank costs for processing cash or credit card payments.
11096 (2) A licensee may receive from an insured or from a person purchasing an insurance
11097 policy, noncommission compensation if the noncommission compensation is stated on a
11098 separate, written disclosure.
11099 (a) The disclosure required by this Subsection (2) shall:
11100 (i) include the signature of the insured or prospective insured acknowledging the
11101 noncommission compensation;
11102 (ii) clearly specify the amount or extent of the noncommission compensation; and
11103 (iii) be provided to the insured or prospective insured before the performance of the
11104 service.
11105 (b) Noncommission compensation shall be:
11106 (i) limited to actual or reasonable expenses incurred for services; and
11107 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of
11108 business or for a specific service or services.
11109 (c) A copy of the signed disclosure required by this Subsection (2) [~~must~~] shall be
11110 maintained by any licensee who collects or receives the noncommission compensation or any
11111 portion of the noncommission compensation.
11112 (d) All accounting records relating to noncommission compensation shall be
11113 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.
11114 (3) (a) A licensee may receive noncommission compensation when acting as a
11115 producer for the insured in connection with the actual sale or placement of insurance if:
11116 (i) the producer and the insured have agreed on the producer's noncommission
11117 compensation; and
11118 (ii) the producer has disclosed to the insured the existence and source of any other
11119 compensation that accrues to the producer as a result of the transaction.
11120 (b) The disclosure required by this Subsection (3) shall:

11121 (i) include the signature of the insured or prospective insured acknowledging the
11122 noncommission compensation;
11123 (ii) clearly specify the amount or extent of the noncommission compensation and the
11124 existence and source of any other compensation; and
11125 (iii) be provided to the insured or prospective insured before the performance of the
11126 service.
11127 (c) The following additional noncommission compensation is authorized:
11128 (i) compensation received by a producer of a compensated corporate surety who under
11129 procedures approved by a rule or order of the commissioner is paid by surety bond principal
11130 debtors for extra services;
11131 (ii) compensation received by an insurance producer who is also licensed as a public
11132 adjuster under Section 31A-26-203, for services performed for an insured in connection with a
11133 claim adjustment, so long as the producer does not receive or is not promised compensation for
11134 aiding in the claim adjustment prior to the occurrence of the claim;
11135 (iii) compensation received by a consultant as a consulting fee, provided the consultant
11136 complies with the requirements of Section 31A-23a-401; or
11137 (iv) other compensation arrangements approved by the commissioner after a finding
11138 that they do not violate Section 31A-23a-401 and are not harmful to the public.
11139 (4) (a) For purposes of this Subsection (4), "producer" includes:
11140 (i) a producer;
11141 (ii) an affiliate of a producer; or
11142 (iii) a consultant.
11143 (b) Beginning January 1, 2010, in addition to any other disclosures required by this
11144 section, a producer may not accept or receive any compensation from an insurer or third party
11145 administrator for the placement of a health benefit plan, other than a hospital confinement
11146 indemnity policy, unless prior to the customer's purchase of the health benefit plan the
11147 producer:
11148 (i) except as provided in Subsection (4)(c), discloses in writing to the customer that the
11149 producer will receive compensation from the insurer or third party administrator for the
11150 placement of insurance, including the amount or type of compensation known to the producer
11151 at the time of the disclosure; and

11152 (ii) except as provided in Subsection (4)(c):
11153 (A) obtains the customer's signed acknowledgment that the disclosure under
11154 Subsection (4)(b)(i) was made to the customer; or
11155 (B) (I) signs a statement that the disclosure required by Subsection (4)(b)(i) was made
11156 to the customer; and
11157 (II) keeps the signed statement on file in the producer's office while the health benefit
11158 plan placed with the customer is in force.
11159 (c) If the compensation to the producer from an insurer or third party administrator is
11160 for the renewal of a health benefit plan, once the producer has made an initial disclosure that
11161 complies with Subsection (4)(b), the producer does not have to disclose compensation received
11162 for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal
11163 period immediately following 36 months after the initial disclosure.
11164 (d) (i) A licensee who collects or receives any part of the compensation from an insurer
11165 or third party administrator in a manner that facilitates an audit shall, while the health benefit
11166 plan placed with the customer is in force, maintain a copy of:
11167 (A) the signed acknowledgment described in Subsection (4)(b)(i); or
11168 (B) the signed statement described in Subsection (4)(b)(ii).
11169 (ii) The standard application developed in accordance with Section 31A-22-635 shall
11170 include a place for a producer to provide the disclosure required by this Subsection (4), and if
11171 completed, shall satisfy the requirement of Subsection (4)(d)(i).
11172 (e) Subsection (4)(b)(ii) does not apply to:
11173 (i) a person licensed as a producer who acts only as an intermediary between an insurer
11174 and the customer's producer, including a managing general agent; or
11175 (ii) the placement of insurance in a secondary or residual market.
11176 (5) This section does not alter the right of any licensee to recover from an insured the
11177 amount of any premium due for insurance effected by or through that licensee or to charge a
11178 reasonable rate of interest upon past-due accounts.
11179 (6) This section does not apply to bail bond producers or bail enforcement agents as
11180 defined in Section 31A-35-102.
11181 Section 272. Section **31A-23a-602** is amended to read:
11182 **31A-23a-602. Required contract provisions.**

11183 A person, firm, association, or corporation acting in the capacity of a managing general
11184 agent may not place business with an insurer unless there is in force a written contract between
11185 the parties which sets forth the responsibilities of each party, and where both parties share
11186 responsibility for a particular function, the contract specifies the division of shared
11187 responsibilities. The written contract shall contain the following minimum provisions:
11188 (1) The insurer may terminate the contract for cause upon written notice to the
11189 managing general agent. The insurer may suspend the underwriting authority of the managing
11190 general agent during the pendency of any dispute regarding the cause for termination.
11191 (2) The managing general agent will render accounts to the insurer detailing all
11192 transactions and remit all funds due under the contract to the insurer at least monthly.
11193 (3) All funds collected for the account of an insurer will be held by the managing
11194 general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account
11195 shall be used for all payments on behalf of the insurer. The managing general agent may retain
11196 no more than three months estimated claims payments and allocated loss adjustment expenses.
11197 (4) Separate records of business written by the managing general agent shall be
11198 maintained. The insurer shall have access and the right to copy all accounts and records related
11199 to its business and shall have access to all books, bank accounts, and records of the managing
11200 general agent. The records shall be retained according to Section 31A-23a-412 and shall be
11201 kept in a form usable by the insurer and the commissioner.
11202 (5) The contract may not be assigned in whole or part by the managing general agent.
11203 (6) The insurer shall have the right to cancel or nonrenew any policy of insurance
11204 subject to the applicable laws and rules. The contract shall contain appropriate underwriting
11205 guidelines including:
11206 (a) the maximum annual premium volume;
11207 (b) the basis of the rates to be charged;
11208 (c) the types of risks which may be written;
11209 (d) maximum limits of liability;
11210 (e) applicable exclusions;
11211 (f) territorial limitations;
11212 (g) policy cancellation provisions; and
11213 (h) the maximum policy period.

11214 (7) If the contract permits the managing general agent to settle claims on behalf of the
11215 insurer:
11216 (a) All claims [~~must~~] shall be reported to the company in a timely manner.
11217 (b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it
11218 becomes known that the claim:
11219 (i) has the potential to exceed the lesser of an amount determined by the commissioner
11220 or the limit set by the company;
11221 (ii) involves a coverage dispute;
11222 (iii) may exceed the managing general agent's claims settlement authority;
11223 (iv) is open for more than six months; or
11224 (v) is closed by payment the lesser of an amount set by the commissioner or an amount
11225 set by the company.
11226 (c) All claim files will be the joint property of the insurer and managing general agent.
11227 However, upon an order of liquidation of the insurer, the files become the sole property of the
11228 insurer or its estate. The managing general agent shall have reasonable access to and the right
11229 to copy the files on a timely basis.
11230 (d) Any settlement authority granted to the managing general agent may be terminated
11231 for cause upon the insurer's written notice to the managing general agent or upon the
11232 termination of the contract. The insurer may suspend the settlement authority during the
11233 pendency of any dispute regarding the cause for termination.
11234 (8) Where electronic claims files are in existence, the contract [~~must~~] shall address the
11235 timely transmission of the data.
11236 (9) If the contract provides for a sharing of interim profits by the managing general
11237 agent, and the managing general agent has the authority to determine the amount of the interim
11238 profits by establishing loss reserves, controlling claim payments, or in any other manner,
11239 interim profits may not be paid to the managing general agent until one year after they are
11240 earned for property insurance business, and five years after they are earned on casualty
11241 business, but not until the profits have been verified by a review conducted pursuant to Section
11242 31A-23a-603.
11243 (10) The managing general agent may not:
11244 (a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing

11245 general agent may bind facultative reinsurance contracts pursuant to obligatory facultative
11246 agreements if the contract with the insurer contains reinsurance underwriting guidelines
11247 including, for both reinsurance assumed and ceded, a list of reinsurers with which the
11248 automatic agreements are in effect, the coverages and amounts or percentages that may be
11249 reinsured, and commission schedules;
11250 (b) commit the insurer to participate in insurance or reinsurance syndicates;
11251 (c) appoint any producer without assuring that the producer is lawfully licensed to
11252 transact the type of insurance for which [~~he~~] the producer is appointed;
11253 (d) without prior approval of the insurer, pay or commit the insurer to pay a claim over
11254 a specified amount, net of reinsurance, which [~~shall not~~] may not exceed 1% of the insurer's
11255 policyholder's surplus as of December 31 of the last completed calendar year;
11256 (e) collect any payment from a reinsurer or commit the insurer to any claim settlement
11257 with a reinsurer without prior approval of the insurer; if prior approval is given, a report [~~must~~]
11258 shall be promptly forwarded to the insurer;
11259 (f) permit its subproducer to serve on the insurer's board of directors;
11260 (g) jointly employ an individual who is employed with the insurer; or
11261 (h) appoint a submanaging general agent.
11262 Section 273. Section **31A-23a-702** is amended to read:
11263 **31A-23a-702. Minimum standards.**
11264 (1) This section applies if, in any calendar year, the aggregate amount of gross written
11265 premium on business placed with a controlled insurer by a controlling producer is equal to or
11266 greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled
11267 insurer's quarterly statement filed as of September 30 of the prior year.
11268 (2) Notwithstanding Subsection (1), this section does not apply if:
11269 (a) the controlling producer places insurance only with the controlled insurer, or only
11270 with the controlled insurer and members of the controlled insurer's holding company system, or
11271 with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based
11272 upon the amount of premiums written in connection with the insurance placed;
11273 (b) the controlling producer accepts insurance placements only from nonaffiliated
11274 producers who are not controlling producers, and not directly from insureds; and
11275 (c) the controlled insurer, except for insurance business written through a residual

11276 market facility, accepts insurance business only from a controlling producer, a producer
11277 controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.
11278 (3) A controlled insurer may not accept business from a controlling producer and a
11279 controlling producer may not place business with a controlled insurer unless there is a written
11280 contract between the controlling producer and the insurer that specifies the responsibilities of
11281 each party and that has been approved by the board of directors of the insurer. The contract
11282 shall contain the following minimum provisions:
11283 (a) The controlled insurer may terminate the contract for cause, upon written notice to
11284 the controlling producer. The controlled insurer shall suspend the authority of the controlling
11285 producer to write business during the pendency of any dispute regarding the cause for the
11286 termination.
11287 (b) The controlling producer shall render accounts to the controlled insurer detailing all
11288 material transactions, including information necessary to support all commissions, charges, and
11289 other fees received by, or owing to, the controlling producer.
11290 (c) The controlling producer shall remit all funds due under the terms of the contract to
11291 the controlled insurer at least monthly. The due date shall be fixed so that premiums or
11292 premium installments collected shall be remitted no later than 90 days after the effective date
11293 of any policy placed with the controlled insurer under the contract.
11294 (d) All funds collected for the controlled insurer's account shall be held by the
11295 controlling producer in a fiduciary capacity, in one or more appropriately identified bank
11296 accounts in banks that are members of the Federal Reserve System FDIC, in accordance with
11297 applicable provisions of this title. However, funds of a controlling producer not required to be
11298 licensed in this state shall be maintained in compliance with the requirements of the controlling
11299 producer's domiciliary jurisdiction.
11300 (e) The controlling producer shall maintain separately identifiable records of business
11301 written for the controlled insurer.
11302 (f) The contract may not be assigned in whole or in part by the controlling producer.
11303 (g) The controlled insurer shall provide the controlling producer with its underwriting
11304 standards, rules, procedures, and manuals setting forth the rates to be charged, and the
11305 conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the
11306 standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and

11307 conditions shall be the same as those applicable to comparable business placed with the
11308 controlled insurer by a producer other than the controlling producer.
11309 (h) The contract shall state the rates and terms of the controlling producer's
11310 commissions, charges, or other fees and the purposes for those charges or fees. The rates of the
11311 commissions, charges, and other fees may not be greater than those applicable to comparable
11312 business and services placed with the controlled insurer by producers other than controlling
11313 producers. For purposes of Subsections (3)(g) and (h), examples of "comparable business and
11314 services" include the same lines of insurance, same kinds of insurance, same kinds of risks,
11315 similar policy limits, and similar quality of business.
11316 (i) If the contract provides that the controlling producer, on insurance business placed
11317 with the insurer, is to be compensated contingent upon the insurer's profits on that business,
11318 then the compensation may not be determined and paid until at least five years after the
11319 premiums on liability insurance are earned, and at least one year after the premiums are earned
11320 on any other insurance. In no event may the commissions be paid until the adequacy of the
11321 controlled insurer's reserves on remaining claims has been independently verified pursuant to
11322 Subsection (5).
11323 (j) The contract shall include a limit on the controlling producer's writings in relation to
11324 the controlled insurer's surplus and total writings. The insurer may establish a different limit to
11325 each line or subline of business. The controlled insurer shall notify the controlling producer
11326 when the applicable limit is approached and [~~shall not~~] may not accept business from the
11327 controlling producer if the limit is reached. The controlling producer may not place business
11328 with the controlled insurer if it has been notified by the controlled insurer that the limit has
11329 been reached.
11330 (k) The controlling producer may negotiate but may not bind reinsurance on behalf of
11331 the controlled insurer on business the controlling producer places with the controlled insurer.
11332 However, the controlling producer may bind facultative reinsurance contracts pursuant to
11333 obligatory facultative agreements if the contract with the controlled insurer contains
11334 underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers
11335 with which the automatic agreements are in effect, the coverages and amounts or percentages
11336 that may be reinsured, and commission schedules.
11337 (4) Each controlled insurer shall have an audit committee of the board of directors.

11338 The audit committee shall annually meet to review the adequacy of the insurer's loss reserves.
11339 The committee shall meet with management, the insurer's independent certified public
11340 accountants, and an independent casualty actuary or any other independent loss reserve
11341 specialists acceptable to the commissioner.
11342 (5) (a) In addition to any other required loss reserve certification, the controlled insurer
11343 shall file with the commissioner on April 1 of each year an opinion of an independent casualty
11344 actuary, or any other independent loss reserve specialist acceptable to the commissioner. The
11345 opinion shall report loss ratios for each line of business written and shall attest to the adequacy
11346 of loss reserves established for losses incurred and outstanding as of year-end on business
11347 placed by the producer including losses incurred but not reported.
11348 (b) The controlled insurer shall annually report to the commissioner the amount of
11349 commissions paid to the producer, the percentage that amount represents of the net premiums
11350 written, and comparable amounts and percentage paid to noncontrolling producers for
11351 placements of the same kinds of insurance.
11352 Section 274. Section **31A-23a-806** is amended to read:
11353 **31A-23a-806. Prohibited acts.**
11354 (1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the
11355 reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions
11356 pursuant to obligatory facultative agreements if the contract with the reinsurer contains
11357 reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include
11358 a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer,
11359 the coverages and amounts or percentages that may be reinsured, and commission schedules.
11360 (2) The reinsurance intermediary-manager may not commit the reinsurer to participate
11361 in reinsurance syndicates.
11362 (3) The reinsurance intermediary-manager may not appoint any producer without
11363 assuring that the producer is lawfully licensed to transact the type of reinsurance for which [~~he~~]
11364 the producer is appointed.
11365 (4) The reinsurance intermediary-manager may not, without prior approval of the
11366 reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the
11367 lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as
11368 of December 31 of the last complete calendar year.

11369 (5) The reinsurance intermediary-manager may not collect any payment from a
11370 retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire,
11371 without prior approval of the reinsurer. If prior approval is given, a report [~~must~~] shall be
11372 promptly forwarded to the reinsurer.
11373 (6) The reinsurance intermediary-manager may not jointly employ an individual who is
11374 employed by the reinsurer unless the reinsurance intermediary-manager is under common
11375 control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.
11376 (7) The reinsurance intermediary-manager may not appoint a subreinsurance
11377 intermediary-manager.
11378 Section 275. Section **31A-27a-202** is amended to read:
11379 **31A-27a-202. Commencement of formal delinquency proceeding.**
11380 (1) A formal delinquency proceeding against a person shall be commenced by filing a
11381 petition in the name of the commissioner or department.
11382 (2) (a) The petition required by Subsection (1):
11383 (i) shall state:
11384 (A) the grounds upon which the proceeding is based; and
11385 (B) the relief requested; and
11386 (ii) may include a request for restraining orders and injunctive relief as described in
11387 Section 31A-27a-108.
11388 (b) Upon the filing of a petition, the commissioner shall forward a notice of the petition
11389 by first-class mail or electronic communication, as permitted by the receivership court, to the
11390 commissioners and guaranty associations in states in which the insurer did business.
11391 (3) (a) A petition that requests injunctive relief:
11392 (i) shall be verified by the commissioner or the commissioner's designee; and
11393 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.
11394 (b) The commissioner shall provide only the notice the receivership court requires.
11395 (4) If a temporary restraining order is requested:
11396 (a) the receivership court may issue an initial order containing the relief requested;
11397 (b) the order shall state the time and date of its issuance;
11398 (c) the receivership court shall set a time and date for the return of summons:
11399 (i) not more than 10 days from the time and date the initial order is issued; and

11400 (ii) at which time the person proceeded against may appear before the receivership
11401 court for a summary hearing; and
11402 (d) the order may not continue in effect beyond the time and date set for the return of
11403 summons, unless the receivership court expressly enters one or more orders extending the
11404 restraining order.
11405 (5) (a) If no temporary restraining order is requested, the receivership court shall cause
11406 summons to be issued.
11407 (b) The summons shall specify:
11408 (i) a return date not more than 30 days after the day on which the summons is issued;
11409 and
11410 (ii) that an answer [~~must~~] shall be filed at or before the return date.
11411 Section 276. Section **31A-27a-205** is amended to read:
11412 **31A-27a-205. Decision and appeals.**
11413 (1) The receivership court shall enter judgment on the petition to commence formal
11414 delinquency proceeding within 15 days after the day on which the evidence is concluded.
11415 (2) (a) An order entered pursuant to Subsection (1) is final when entered.
11416 (b) An appeal shall be:
11417 (i) handled on an expedited basis; and
11418 (ii) taken within five days of the day on which judgment is entered.
11419 (3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order
11420 has full force and effect and the receiver shall carry out the order's terms and this chapter.
11421 (b) A request for reconsideration, review, or appeal, or posting of a bond, may not
11422 dissolve or stay the judgment.
11423 (4) (a) The following motions [~~must~~] shall first be presented to the receivership court:
11424 (i) a motion for a stay of a judgment;
11425 (ii) a motion for approval of a supersedes bond; or
11426 (iii) a motion for other relief pending appeal.
11427 (b) Except for a grant of a petition for rehabilitation which shall remain in effect
11428 pending a decision on appeal, during the pendency of an appeal the receivership court may do
11429 any of the following in accordance with the Utah Rules of Civil Procedure:
11430 (i) suspend an order entered under Subsection (1);

11431 (ii) modify an order entered under Subsection (1); or
11432 (iii) make any other appropriate order governing the enforceability of an order entered
11433 under Subsection (1).
11434 (c) The receivership court or an appellate court to which the matter is presented may
11435 condition any relief it grants under this Subsection (4) on the filing of a bond or other
11436 appropriate security with the receivership court.
11437 (5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal
11438 regardless of the appeal's ultimate disposition.
11439 (6) The reversal or modification on appeal of an order of rehabilitation or liquidation
11440 does not affect the validity of an act of the receiver pursuant to the order unless the order is
11441 stayed pending appeal.
11442 Section 277. Section **31A-27a-502** is amended to read:
11443 **31A-27a-502. Recovery from affiliates.**
11444 (1) (a) If a receivership order is entered under this chapter, the receiver appointed under
11445 the receivership order may recover on behalf of the insurer from an affiliate as defined in
11446 Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years
11447 preceding the filing date of the delinquency proceedings.
11448 (b) A person disputing that person's status as an affiliate [~~must~~] shall prove by clear
11449 and convincing evidence the person's nonaffiliate status.
11450 (c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).
11451 (2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is
11452 not recoverable if the recipient shows by a preponderance of the evidence that:
11453 (a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;
11454 (b) the department had notice to and approved the stock dividend; and
11455 (c) the insurer did not know and could not reasonably have known that the stock
11456 dividend distribution to the affiliate might adversely affect the solvency of the insurer.
11457 (3) The maximum amount recoverable under this section is the amount needed to pay
11458 all claims under the receivership:
11459 (a) in excess of all other available recoverable assets; and
11460 (b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to
11461 any receiver under similar laws of other states.

11462 (4) (a) A person who is an affiliate at the time value is received is liable up to the
11463 amount of value received by the affiliate.
11464 (b) If two or more affiliates are liable regarding the same value received, they are
11465 jointly and severally liable.
11466 (5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one
11467 year, all affiliates at the time the value is received are jointly and severally liable for any
11468 resulting deficiency in the amount that would have been recovered from the nonpaying
11469 affiliate.
11470 (6) This section does not enlarge the personal liability of a director under existing law.
11471 (7) An action or proceeding under this section may not be commenced after the earlier
11472 of:
11473 (a) six years after the day on which a receiver is appointed; or
11474 (b) the day on which the receivership is terminated.
11475 Section 278. Section **31A-27a-701** is amended to read:
11476 **31A-27a-701. Priority of distribution.**
11477 (1) (a) The priority of payment of distributions on unsecured claims shall be in
11478 accordance with the order in which each class of claim is set forth in this section except as
11479 provided in Section 31A-27a-702.
11480 (b) All claims in each class shall be paid in full or adequate funds retained for the
11481 claim's payment before a member of the next class receives payment.
11482 (c) All claims within a class shall be paid substantially the same percentage.
11483 (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may
11484 not be established within a class.
11485 (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to
11486 circumvent the priority classes through the use of equitable remedies.
11487 (2) The order of distribution of claims shall be as follows:
11488 (a) a Class 1 claim, which:
11489 (i) is a cost or expense of administration expressly approved or ratified by the
11490 liquidator, including the following:
11491 (A) the actual and necessary costs of preserving or recovering the property of the
11492 insurer;

11493 (B) reasonable compensation for all services rendered on behalf of the administrative
11494 supervisor or receiver;
11495 (C) a necessary filing fee;
11496 (D) the fees and mileage payable to a witness;
11497 (E) an unsecured loan obtained by the receiver, which:
11498 (I) unless its terms otherwise provide, has priority over all other costs of
11499 administration; and
11500 (II) absent agreement to the contrary, shares pro rata with all other claims described in
11501 this Subsection (2)(a)(i)(E); and
11502 (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the
11503 course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and
11504 (ii) except as expressly approved by the receiver, excludes any expense arising from a
11505 duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a
11506 Class 7 claim;
11507 (b) a Class 2 claim, which:
11508 (i) is a reasonable expense of a guaranty association, including overhead, salaries, or
11509 other general administrative expenses allocable to the receivership such as:
11510 (A) an administrative or claims handling expense;
11511 (B) an expense in connection with arrangements for ongoing coverage; and
11512 (C) in the case of a property and casualty guaranty association, a loss adjustment
11513 expense, including:
11514 (I) an adjusting or other expense; and
11515 (II) a defense or cost containment expense; and
11516 (ii) excludes an expense incurred in the performance of duties under Section
11517 31A-28-112 or similar duties under the statute governing a similar organization in another
11518 state;
11519 (c) a Class 3 claim, which:
11520 (i) is:
11521 (A) a claim under a policy of insurance including a third party claim;
11522 (B) a claim under an annuity contract or funding agreement;
11523 (C) a claim under a nonassessable policy for unearned premium;

11524 (D) a claim of an obligee and, subject to the discretion of the receiver, a completion
11525 contractor under a surety bond or surety undertaking, except for:
11526 (I) a bail bond;
11527 (II) a mortgage guaranty;
11528 (III) a financial guaranty; or
11529 (IV) other form of insurance offering protection against investment risk or warranties;
11530 (E) a claim by a principal under a surety bond or surety undertaking for wrongful
11531 dissipation of collateral by the insurer or its agents;
11532 (F) an indemnity payment on:
11533 (I) a covered claim;
11534 (II) unearned premium; or
11535 (III) a payment for the continuation of coverage made by an entity responsible for the
11536 payment of a claim or continuation of coverage of an insolvent health maintenance
11537 organization;
11538 (G) a claim incurred during the extension of coverage provided for in Sections
11539 31A-27a-402 and 31A-27a-403; or
11540 (H) all other claims incurred in fulfilling the statutory obligations of a guaranty
11541 association not included in Class 2, including:
11542 (I) an indemnity payment on covered claims; and
11543 (II) in the case of a life and health guaranty association, a claim:
11544 (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities
11545 incurred on behalf of a covered claim or covered obligation of the insurer; and
11546 (Bb) for the funds needed to reinsure the obligations described under this Subsection
11547 (2)(c)(i)(H)(II) with a solvent insurer; and
11548 (ii) notwithstanding any other provision of this chapter, excludes the following which
11549 shall be paid under Class 7, except as provided in this section:
11550 (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
11551 (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant
11552 to a claims made policy after:
11553 (I) the expiration date of the policy;
11554 (II) the policy is replaced by the insured;

11555 (III) the policy is canceled at the insured's request; or
11556 (IV) the policy is canceled as provided in this chapter;
11557 (C) an obligation to an insurer, insurance pool, or underwriting association and the
11558 insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or
11559 subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is
11560 the named insured;
11561 (D) an amount accrued as punitive or exemplary damages unless expressly covered
11562 under the terms of the policy, which shall be paid as a claim in Class 9;
11563 (E) a tort claim of any kind against the insurer;
11564 (F) a claim against the insurer for bad faith or wrongful settlement practices; and
11565 (G) a claim of a guaranty association for assessments not paid by the insurer, which
11566 claims shall be paid as claims in Class 7; and
11567 (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium
11568 claim on a policy, other than a reinsurance agreement;
11569 (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial
11570 guaranty, or other forms of insurance offering protection against investment risk or warranties;
11571 (e) a Class 5 claim, which is a claim of the federal government not included in Class 3
11572 or 4;
11573 (f) a Class 6 claim, which is a debt due an employee for services or benefits:
11574 (i) to the extent that the expense:
11575 (A) does not exceed the lesser of:
11576 (I) $5,000; or
11577 (II) two months' salary; and
11578 (B) represents payment for services performed within one year before the day on which
11579 the initial order of receivership is issued; and
11580 (ii) which priority is in lieu of any other similar priority that may be authorized by law
11581 as to wages or compensation of employees;
11582 (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1
11583 through 6, including:
11584 (i) a claim under a reinsurance contract;
11585 (ii) a claim of a guaranty association for an assessment not paid by the insurer; and

11586 (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8
11587 through 13;
11588 (h) subject to Subsection (3), a Class 8 claim, which is:
11589 (i) a claim of a state or local government, except a claim specifically classified
11590 elsewhere in this section; or
11591 (ii) a claim for services rendered and expenses incurred in opposing a formal
11592 delinquency proceeding;
11593 (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures,
11594 unless expressly covered under the terms of a policy of insurance;
11595 (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and
11596 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;
11597 (k) subject to Subsection (4), a Class 11 claim, which is:
11598 (i) a surplus note;
11599 (ii) a capital note;
11600 (iii) a contribution note;
11601 (iv) a similar obligation;
11602 (v) a premium refund on an assessable policy; or
11603 (vi) any other claim specifically assigned to this class;
11604 (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1
11605 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the
11606 liquidator and approved by the receivership court; and
11607 (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or
11608 other owner arising out of:
11609 (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity;
11610 and
11611 (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.
11612 (3) To prove a claim described in Class 8, the claimant [~~must~~] shall show that:
11613 (a) the insurer that is the subject of the delinquency proceeding incurred the fee or
11614 expense on the basis of the insurer's best knowledge, information, and belief:
11615 (i) formed after reasonable inquiry indicating opposition is in the best interests of the
11616 insurer;

11617 (ii) that is well grounded in fact; and
11618 (iii) is warranted by existing law or a good faith argument for the extension,
11619 modification, or reversal of existing law; and
11620 (b) opposition is not pursued for any improper purpose, such as to harass, to cause
11621 unnecessary delay, or to cause needless increase in the cost of the litigation.
11622 (4) (a) A claim in Class 11 is subject to a subordination agreement related to other
11623 claims in Class 11 that exist before the entry of a liquidation order.
11624 (b) A claim in Class 13 is subject to a subordination agreement, related to other claims
11625 in Class 13 that exist before the entry of a liquidation order.
11626 Section 279. Section **31A-30-107.3** is amended to read:
11627 **31A-30-107.3. Discontinuance and nonrenewal limitations and conditions.**
11628 (1) (a) A carrier that elects to discontinue offering a health benefit plan under
11629 Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e) is prohibited from writing new business:
11630 (i) in the small employer and individual market in this state; and
11631 (ii) for a period of five years beginning on the date of discontinuation of the last
11632 coverage that is discontinued.
11633 (b) The prohibition described in Subsection (1)(a) may be waived if the commissioner
11634 finds that waiver is in the public interest:
11635 (i) to promote competition; or
11636 (ii) to resolve inequity in the marketplace.
11637 (2) (a) If the Comprehensive Health Insurance Pool as set forth under Title 31A,
11638 Chapter 29, Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if
11639 enrollment is capped or suspended, an individual carrier:
11640 (i) may elect to discontinue offering new individual health benefit plans, except to
11641 HIPAA eligibles, but [~~must~~] shall keep existing individual health benefit plans in effect, except
11642 those individual plans that are not renewed under the provisions of Subsection 31A-30-107(2)
11643 or 31A-30-107.1(2);
11644 (ii) may elect to continue to offer new individual and small employer health benefit
11645 plans; or
11646 (iii) may elect to discontinue all of the covered carrier's health benefit plans in the
11647 individual or small group market under the provisions of Subsection 31A-30-107(3)(e) or

11648 31A-30-107.1(3)(e).
11649 (b) A carrier that makes an election under Subsection (2)(a)(i):
11650 (i) is prohibited from writing new business:
11651 (A) in the individual market in this state; and
11652 (B) for a period of five years beginning on the date of discontinuation;
11653 (ii) may continue to write new business in the small employer market; and
11654 (iii) [~~must~~] shall provide written notice of the election under Subsection (2)(a)(i) within
11655 two calendar days of the election to the Utah Insurance Department.
11656 (c) The prohibition described in Subsection (2)(b)(i) may be waived if the
11657 commissioner finds that waiver is in the public interest:
11658 (i) to promote competition; or
11659 (ii) to resolve inequity in the marketplace.
11660 (d) A carrier that makes an election under Subsection (2)(a)(iii) is subject to the
11661 provisions of Subsection (1).
11662 (3) If a carrier is doing business in one established geographic service area of the state,
11663 Sections 31A-30-107 and 31A-30-107.1 apply only to the carrier's operations in that
11664 geographic service area.
11665 (4) If a small employer employs less than two eligible employees, a carrier may not
11666 discontinue or not renew the health benefit plan until the first renewal date following the
11667 beginning of a new plan year, even if the carrier knows as of the beginning of the plan year that
11668 the employer no longer has at least two current employees.
11669 Section 280. Section **31A-30-107.5** is amended to read:
11670 **31A-30-107.5. Preexisting condition exclusion -- Condition-specific exclusion**
11671 **riders -- Limitation periods.**
11672 (1) A health benefit plan may impose a preexisting condition exclusion only if the
11673 provision complies with Subsection 31A-22-605.1(4).
11674 (2) (a) In accordance with Subsection (2)(b), an individual carrier:
11675 (i) may, when the individual carrier and the insured mutually agree in writing to a
11676 condition-specific exclusion rider, offer to issue an individual policy that excludes all treatment
11677 and prescription drugs related to:
11678 (A) a specific physical condition;

11679 (B) a specific disease or disorder; and
11680 (C) any specific or class of prescription drugs; and
11681 (ii) may offer an individual policy that may establish separate cost sharing
11682 requirements including, deductibles and maximum limits that are specific to covered services
11683 and supplies, including drugs, when utilized for the treatment and care of the conditions,
11684 diseases, or disorders listed in Subsection (2)(b).
11685 (b) (i) Except as provided in Section 31A-22-630 and Subsection (2)(b)(ii), the
11686 following may be the subject of a condition-specific exclusion rider:
11687 (A) conditions, diseases, and disorders of the bones or joints of the ankle, arm, elbow,
11688 fingers, foot, hand, hip, knee, leg, mandible, mastoid, wrist, shoulder, spine, and toes, including
11689 bone spurs, bunions, carpal tunnel syndrome, club foot, cubital tunnel syndrome, hammertoe,
11690 syndactylism, and treatment and prosthetic devices related to amputation;
11691 (B) anal fistula, anal fissure, anal stricture, breast implants, breast reduction, chronic
11692 cystitis, chronic prostatitis, cystocele, rectocele, enuresis, hemorrhoids, hydrocele, hypospadius,
11693 interstitial cystitis, kidney stones, uterine leiomyoma, varicocele, spermatocele, endometriosis;
11694 (C) allergic rhinitis, nonallergic rhinitis, hay fever, dust allergies, pollen allergies,
11695 deviated nasal septum, and sinus related conditions, diseases, and disorders;
11696 (D) hemangioma, keloids, scar revisions, and other skin related conditions, diseases,
11697 and disorders;
11698 (E) goiter and other thyroid related conditions, diseases, or disorders;
11699 (F) cataracts, cornea transplant, detached retina, glaucoma, keratoconus, macular
11700 degeneration, strabismus and other eye related conditions, diseases, and disorders;
11701 (G) otitis media, cholesteatoma, otosclerosis, and other internal/external ear conditions,
11702 diseases, and disorders;
11703 (H) Baker's cyst, ganglion cyst;
11704 (I) abdominoplasty, esophageal reflux, hernia, Meniere's disease, migraines, TIC
11705 Doulourex, varicose veins, vestibular disorders;
11706 (J) sleep disorders and speech disorders; and
11707 (K) any specific or class of prescription drugs.
11708 (ii) Subsection (2)(b)(i) does not apply:
11709 (A) for the treatment of asthma; or

11710 (B) when the condition is due to cancer.
11711 (iii) A condition-specific exclusion rider:
11712 (A) shall be limited to the excluded condition, disease, or disorder and any
11713 complications from that condition, disease, or disorder;
11714 (B) may not extend to any secondary medical condition; and
11715 (C) [~~must~~] shall include the following informed consent paragraph: "I agree by signing
11716 below, to the terms of this rider, which excludes coverage for all treatment, including
11717 medications, related to the specific condition(s), disease(s), and/or disorder(s) stated herein and
11718 that if treatment or medications are received that I have the responsibility for payment for those
11719 services and items. I further understand that this rider does not extend to any secondary
11720 medical condition, disease, or disorder."
11721 (c) If an individual carrier issues a condition-specific exclusion rider, the
11722 condition-specific exclusion rider shall remain in effect for the duration of the policy at the
11723 individual carrier's option.
11724 (d) An individual policy issued in accordance with this Subsection (2) is not subject to
11725 Subsection 31A-26-301.6(7).
11726 (3) Notwithstanding the other provisions of this section, a health benefit plan may
11727 impose a limitation period if:
11728 (a) each policy that imposes a limitation period under the health benefit plan specifies
11729 the physical condition, disease, or disorder that is excluded from coverage during the limitation
11730 period;
11731 (b) the limitation period does not exceed 12 months;
11732 (c) the limitation period is applied uniformly; and
11733 (d) the limitation period is reduced in compliance with Subsections
11734 31A-22-605.1(4)(a) and (4)(b).
11735 Section 281. Section **31A-30-110** is amended to read:
11736 **31A-30-110. Individual enrollment cap.**
11737 (1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.
11738 (2) The commissioner shall raise the individual enrollment cap by .5% at the later of
11739 the following dates:
11740 (a) six months from the last increase in the individual enrollment cap; or

11741 (b) the date when CCI/TI is greater than .90, where:
11742 (i) "CCI" is the total individual coverage count for all carriers certifying that their
11743 uninsurable percentage has reached the individual enrollment cap; and
11744 (ii) "TI" is the total individual coverage count for all carriers.
11745 (3) The commissioner may establish a minimum number of uninsurable individuals
11746 that a carrier entering the market who is subject to this chapter [~~must~~] shall accept under the
11747 individual enrollment provisions of this chapter.
11748 (4) Beginning July 1, 1997, an individual carrier may decline to accept individuals
11749 applying for individual enrollment under Subsection 31A-30-108(3), other than individuals
11750 applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:
11751 (a) the uninsurable percentage for that carrier equals or exceeds the cap established in
11752 Subsection (1); and
11753 (b) the covered carrier has certified on forms provided by the commissioner that its
11754 uninsurable percentage equals or exceeds the individual enrollment cap.
11755 (5) The department may audit a carrier's records to verify whether the carrier's
11756 uninsurable classification meets industry standards for underwriting criteria as established by
11757 the commissioner in accordance with Subsection 31A-30-106(1)(i).
11758 (6) (a) If the commissioner determines that individual enrollment is causing a
11759 substantial adverse effect on premiums, enrollment, or experience, the commissioner may
11760 suspend, limit, or delay further individual enrollment for up to 12 months.
11761 (b) The commissioner shall adopt rules to establish a uniform methodology for
11762 calculating and reporting loss ratios for individual policies for determining whether the
11763 individual enrollment provisions of Section 31A-30-108 should be waived for an individual
11764 carrier experiencing significant and adverse financial impact as a result of complying with
11765 those provisions.
11766 Section 282. Section **31A-30-206** is amended to read:
11767 **31A-30-206. Minimum participation and contribution levels -- Premium**
11768 **payments.**
11769 An insurer who offers a health benefit plan for which an employer has established a
11770 defined contribution arrangement under the provisions of this part:
11771 (1) [~~shall not~~] may not:

11772 (a) establish an employer minimum contribution level for the health benefit plan
11773 premium under Section 31A-30-112, or any other law; or
11774 (b) discontinue or non-renew a policy under Subsection 31A-30-107(4) for failure to
11775 maintain a minimum employer contribution level;
11776 (2) shall accept premium payments for an enrollee from multiple sources through the
11777 Internet portal, including:
11778 (a) government assistance programs;
11779 (b) contributions from a Section 125 Cafeteria plan, a health reimbursement
11780 arrangement, or other qualified mechanism for pre-tax payments established by any employer
11781 of the enrollee;
11782 (c) contributions from a Section 125 Cafeteria plan, a health reimbursement
11783 arrangement, or other qualified mechanism for pre-tax payments established by an employer of
11784 a spouse or dependent of the enrollee; and
11785 (d) contributions from private sources of premium assistance; and
11786 (3) may require, as a condition of coverage, a minimum participation level for eligible
11787 employees of an employer, which for purposes of the defined contribution arrangement market
11788 may not exceed 75% participation.
11789 Section 283. Section **31A-34-104** is amended to read:
11790 **31A-34-104. Alliance -- Required license.**
11791 (1) A person [~~must~~] shall be licensed as an alliance pursuant to this chapter to directly
11792 or indirectly make available or otherwise arrange for health insurance through multiple
11793 unaffiliated insurers through the use of coordinated actuarial models, coordinated underwriting,
11794 or coordinated marketing methodologies.
11795 (2) (a) A person may not hold itself out as a health insurance purchasing alliance,
11796 purchasing alliance, health insurance purchasing cooperative, purchasing cooperative, or
11797 otherwise use a similar name unless licensed by the commissioner as an alliance.
11798 (b) Notwithstanding Subsection (2)(a), a person may hold itself out as a voluntary
11799 health insurance purchasing association without being licensed by the commissioner as
11800 provided in Section 31A-34-105.
11801 (3) To apply for licensure as an alliance, a person shall complete an application in a
11802 form designated by the commissioner and file it with the commissioner, together with the

11803 applicable filing fees determined by the commissioner under Section 63J-1-504.
11804 Section 284. Section **31A-34-107** is amended to read:
11805 **31A-34-107. Directors, trustees, and officers.**
11806 (1) To ensure representation of consumer interests, at least 25% of the board [~~must~~]
11807 shall be enrollees, chosen under a plan proposed by the alliance and approved by the
11808 commissioner.
11809 (2) Those who sit as directors or trustees on the board or as officers or principals of the
11810 corporation or trust [~~must~~] shall be trustworthy and collectively have the competence and
11811 experience to carry out the activities of the alliance.
11812 Section 285. Section **31A-36-107** is amended to read:
11813 **31A-36-107. Examinations and retention of records.**
11814 (1) The commissioner may conduct an examination of a life settlement provider or life
11815 settlement producer in accordance with Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and
11816 31A-2-205.
11817 (2) A life settlement provider or life settlement producer shall retain for five years
11818 copies of:
11819 (a) the following records, whether proposed, offered, or executed, from the later of the
11820 date of the proposal, offer, or execution:
11821 (i) contracts;
11822 (ii) purchase agreements;
11823 (iii) underwriting documents;
11824 (iv) policy forms; and
11825 (v) applications;
11826 (b) checks, drafts, and other evidence or documentation relating to the payment,
11827 transfer, or release of money, from the date of the transaction; and
11828 (c) records and documents related to the requirements of this chapter.
11829 (3) This section does not relieve a person of the obligation to produce a document
11830 described in Subsection (2) to the commissioner after the expiration of the relevant period if
11831 the person has retained the document.
11832 (4) A record required by this section to be retained:
11833 (a) [~~must~~] shall be legible and complete; and

11834 (b) may be retained in any form or by any process that accurately reproduces or is a
11835 durable medium for the reproduction of the record.
11836 (5) An examiner may not be appointed by the commissioner if the examiner, either
11837 directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a
11838 pecuniary interest in a person subject to examination under this chapter. This Subsection (5)
11839 does not automatically preclude an examiner from being:
11840 (a) an owner;
11841 (b) an insured in a settled policy; or
11842 (c) a beneficiary in a policy that is proposed to be settled.
11843 (6) (a) An examinee under this section shall reimburse the cost of an examination to the
11844 department consistent with Section 31A-2-205.
11845 (b) Notwithstanding Subsection (6)(a), an individual life settlement producer is not
11846 subject to Section 31A-2-205.
11847 Section 286. Section **31A-36-109** is amended to read:
11848 **31A-36-109. General requirements.**
11849 (1) If a life settlement provider transfers ownership or changes the beneficiary of a
11850 settled policy, the life settlement provider shall inform the insured of the transfer or change
11851 within 20 calendar days.
11852 (2) A life settlement provider that enters a life settlement shall first obtain:
11853 (a) if the owner is the insured, a written statement from a licensed attending physician
11854 that the owner is of sound mind and under no constraint or undue influence to enter a life
11855 settlement;
11856 (b) a witnessed document in which the owner represents that:
11857 (i) the owner has a full and complete understanding of the life settlement and the
11858 benefits of the policy;
11859 (ii) the owner has entered the life settlement freely and voluntarily; and
11860 (iii) if applicable, the insured is terminally ill or chronically ill and that the illness was
11861 diagnosed after the policy was issued; and
11862 (c) a document in which the insured consents to the release of the insured's medical
11863 records to:
11864 (i) a life settlement provider;

11865 (ii) a life settlement producer; and
11866 (iii) the insurer that issued the policy covering the insured.
11867 (3) Within 20 calendar days after an owner executes documents necessary to transfer
11868 rights under a policy, or enters into an agreement in any form, express or implied, to settle the
11869 policy, the life settlement provider shall give written notice to the issuer of the policy that the
11870 policy has or will become settled. The notice [~~must~~] shall be accompanied by a copy of the
11871 documents required by Subsection (4).
11872 (4) The life settlement provider shall deliver a copy of the following to the insurer that
11873 issued the policy that is the subject of the life settlement:
11874 (a) the medical release required under Subsection (2)(c);
11875 (b) a copy of the owner's application for the life settlement; and
11876 (c) the notice required under Subsection (3).
11877 (5) (a) An insurer shall complete and return a request for verification of coverage not
11878 later than 30 calendar days after the day on which the request is received. In its response, the
11879 insurer shall indicate whether the insurer intends to pursue an investigation regarding the
11880 validity of the insurance contract.
11881 (b) An insurer may not require that a person making a request under Subsection (5)(a)
11882 provide the insurer additional information in order for the insurer to comply with Subsection
11883 (5)(a), if the person provides the insurer:
11884 (i) a request for verification of coverage made on an original, facsimile, or electronic
11885 copy of a verification of coverage for a policy document adopted by the commissioner by rule
11886 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
11887 (ii) an authorization that accompanies the verification described in Subsection (5)(b)(i)
11888 signed by the owner.
11889 (6) Medical information solicited or obtained by a life settlement provider or life
11890 settlement producer is subject to:
11891 (a) other laws of this state relating to the confidentiality of the information; and
11892 (b) a rule relating to privacy of medical or personal information promulgated by the
11893 commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C.
11894 Sec. 6805.
11895 (7) (a) (i) A life settlement entered into in this state [~~must~~] shall reserve to the owner

11896 an unconditional right to rescind the life settlement within the rescission period provided for in
11897 this Subsection (7).
11898 (ii) The rescission period ends 15 calendar days after the day on which the owner
11899 receives the proceeds of the life settlement.
11900 (iii) Rescission by an owner may be conditioned on the owner giving notice and
11901 repaying to the life settlement provider within the rescission period all proceeds of the life
11902 settlement and any premium, loan, or loan interest paid by or on behalf of the life settlement
11903 provider in connection with or as a consequence of the life settlement.
11904 (b) If the insured dies during the rescission period, the life settlement is considered to
11905 be rescinded if the proceeds, premiums, loans, and loan interest paid by the life settlement
11906 provider or life settlement purchaser are repaid within 60 calendar days of the day on which the
11907 insured dies.
11908 (8) (a) Contact with an insured to determine the health status of the insured after a life
11909 settlement may be made only by a life settlement provider or life settlement producer that is
11910 licensed in this state, or its authorized representative, and no more than:
11911 (i) once every three months if the insured has a life expectancy of one year or more; or
11912 (ii) once every month if the insured has a life expectancy of less than one year.
11913 (b) A life settlement provider or life settlement producer shall explain the procedure for
11914 the contacts allowed under this Subsection (8) to the owner when the application for the life
11915 settlement is signed by all participants in the life settlement.
11916 (c) The limitations of this Subsection (8) do not apply to contacts for purposes other
11917 than determining health status.
11918 (d) A life settlement provider or life settlement producer is responsible for the acts of
11919 its authorized representative in violation of this Subsection (8).
11920 (9) The trustee of a related provider trust [~~must~~] shall agree in writing with the life
11921 settlement provider that:
11922 (a) the life settlement provider is responsible for ensuring compliance with all statutory
11923 and regulatory requirements; and
11924 (b) the trustee will make all records and files related to life settlements available to the
11925 commissioner as if those records and files were maintained directly by the life settlement
11926 provider.

11927 (10) Regardless of the method of compensation, a life settlement producer:
11928 (a) represents only the owner; and
11929 (b) owes a fiduciary duty to the owner to act according to the owner's instructions and
11930 in the best interest of the owner.
11931 Section 287. Section **31A-36-110** is amended to read:
11932 **31A-36-110. Payment and document requirements.**
11933 (1) (a) A life settlement provider shall instruct the owner to send the executed
11934 documents required to effect the change in ownership or assignment or change of beneficiary
11935 of the affected policy to a designated independent escrow agent.
11936 (b) Within three business days after the day on which the escrow agent receives the
11937 documents, or within three business days after the day on which the life settlement provider
11938 receives the documents if by mistake they are sent directly to the life settlement provider, the
11939 life settlement provider shall deposit the proceeds of the life settlement into an escrow or trust
11940 account of the escrow agent in a federally insured depository institution.
11941 (2) (a) Upon completion of the requirements of Subsection (1), the escrow agent shall
11942 deliver the original documents executed by the owner to:
11943 (i) the life settlement provider; or
11944 (ii) a related provider trust or other designated representative of the life settlement
11945 provider.
11946 (b) Upon the life settlement provider's receipt from the insurer of an acknowledgment
11947 of the change in ownership or assignment or change of beneficiary of the affected policy, the
11948 life settlement provider shall instruct the escrow agent to pay the proceeds of the life settlement
11949 to the owner.
11950 (3) Payment to the owner [~~must~~] shall be made within three business days after the day
11951 on which the life settlement provider receives the acknowledgment from the insurer. Failure to
11952 make the payment within that time makes the life settlement voidable by the owner for lack of
11953 consideration until payment is tendered to and accepted by the owner.
11954 Section 288. Section **31A-36-112** is amended to read:
11955 **31A-36-112. Advertising regulations.**
11956 (1) (a) A life settlement provider or life settlement producer shall establish and
11957 continuously maintain a system of control over the content, form, and method of dissemination

11958 of advertisements of the life settlement provider's or life settlement producer's contracts and
11959 services.
11960 (b) An advertisement is the responsibility of the life settlement provider or life
11961 settlement producer as well as the person that creates or presents the advertisement.
11962 (c) A system of control [~~must~~] shall include at least annual notification to persons
11963 authorized by the life settlement provider or life settlement producer that disseminate
11964 advertisements of the requirements and procedures for approval before use of any
11965 advertisements not furnished by the life settlement provider or life settlement producer.
11966 (2) An advertisement [~~must~~] shall be truthful and not misleading in fact or by
11967 implication, as determined by the commissioner from the overall impression it may reasonably
11968 be expected to create upon a person of average education or intelligence in the segment of the
11969 public to which it is directed.
11970 (3) A false or misleading statement is not remedied by:
11971 (a) making a life settlement available for inspection before it is consummated; or
11972 (b) offering to refund payment if the owner is not satisfied within the period prescribed
11973 in Subsection 31A-36-109(7).
11974 Section 289. Section **31A-36-114** is amended to read:
11975 **31A-36-114. Reporting of fraud and immunity.**
11976 (1) A person engaged in the business of life settlements that knows or reasonably
11977 suspects that a violation of Section 31A-36-113 is being, has been, or will be committed shall
11978 provide to the commissioner the information required by, and in a manner prescribed by, the
11979 commissioner.
11980 (2) A person not engaged in the business of life settlements that knows or reasonably
11981 believes that a violation of Section 31A-36-113 is being, has been, or will be committed may
11982 furnish to the commissioner the information required by, and in a manner prescribed by, the
11983 commissioner.
11984 (3) Except as provided in Subsection (4), a person furnishing information of the kind
11985 described in this section is immune from liability and civil action if the information is
11986 furnished to or received from:
11987 (a) the commissioner or the commissioner's employees, agents, or representatives;
11988 (b) federal, state, or local law enforcement or regulatory officials or their employees,

11989 agents, or representatives;
11990 (c) another person involved in the prevention or detection of violations of Section
11991 31A-36-113 or that person's employees, agents, or representatives;
11992 (d) the following organizations or their employees, agents, or representatives:
11993 (i) the National Association of Insurance Commissioners;
11994 (ii) the Financial Industry Regulatory Authority;
11995 (iii) the North American Securities Administrators Association; or
11996 (iv) another regulatory body overseeing life insurance, life settlements, securities, or
11997 investment fraud; or
11998 (e) the insurer that issued the policy concerned in the information.
11999 (4) The immunity provided in Subsection (3) does not extend to a statement made with
12000 actual malice. In an action brought against a person for filing a report or furnishing other
12001 information concerning a violation of this section, the plaintiff [~~must~~] shall plead specifically
12002 that the defendant acted with actual malice.
12003 (5) A person furnishing information as identified in Subsection (3) is entitled to an
12004 award of attorney fees and costs if:
12005 (a) the person is the prevailing party in a civil cause of action for libel, slander, or
12006 another relevant tort arising out of activities in carrying out the provisions of this chapter; and
12007 (b) the action did not have a reasonable basis in law or fact at the time it was initiated.
12008 (6) This section does not supplant or modify any other privilege or immunity at
12009 common law or under another statute.
12010 Section 290. Section **31A-37-105** is amended to read:
12011 **31A-37-105. Operation of a branch captive insurance company.**
12012 Except as otherwise provided in this chapter, a branch captive insurance company
12013 [~~must~~] shall be a pure captive insurance company with respect to operations in this state, unless
12014 otherwise permitted by the commissioner under Section 31A-37-106.
12015 Section 291. Section **31A-37-106** is amended to read:
12016 **31A-37-106. Authority to make rules -- Authority to issue orders.**
12017 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
12018 commissioner may adopt rules to:
12019 (a) determine circumstances under which a branch captive insurance company is not

12020 required to be a pure captive insurance company;
12021 (b) require a statement, document, or information that a captive insurance company
12022 [~~must~~] shall provide to the commissioner to obtain a certificate of authority;
12023 (c) determine a factor a captive insurance company shall provide evidence of under
12024 Subsection 31A-37-202(4)(c);
12025 (d) prescribe one or more capital requirements for a captive insurance company in
12026 addition to those required under Section 31A-37-204 based on the type, volume, and nature of
12027 insurance business transacted by the captive insurance company;
12028 (e) establish:
12029 (i) the amount of capital or surplus required to be retained under Subsection
12030 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance
12031 company; or
12032 (ii) a formula to determine the amount described in Subsection 31A-37-205(4);
12033 (f) waive or modify a requirement for public notice and hearing for the following by a
12034 captive insurance company:
12035 (i) merger;
12036 (ii) consolidation;
12037 (iii) conversion;
12038 (iv) mutualization; or
12039 (v) redomestication;
12040 (g) approve the use of one or more reliable methods of valuation and rating for:
12041 (i) an association captive insurance company;
12042 (ii) a sponsored captive insurance company; or
12043 (iii) an industrial insured group;
12044 (h) prohibit or limit an investment that threatens the solvency or liquidity of:
12045 (i) a pure captive insurance company; or
12046 (ii) an industrial insured captive insurance company;
12047 (i) determine the financial reports a sponsored captive insurance company shall
12048 annually file with the commissioner;
12049 (j) prescribe the required forms and reports under Section 31A-37-501; and
12050 (k) establish one or more standards to ensure that:

12051 (i) one of the following is able to exercise control of the risk management function of a
12052 controlled unaffiliated business to be insured by a pure captive insurance company:
12053 (A) a parent; or
12054 (B) an affiliated company of a parent; or
12055 (ii) one of the following is able to exercise control of the risk management function of
12056 a controlled unaffiliated business to be insured by an industrial insured captive insurance
12057 company:
12058 (A) an industrial insured; or
12059 (B) an affiliated company of the industrial insured.
12060 (2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules
12061 authorized under Subsection (1)(k), the commissioner may by temporary order grant authority
12062 to insure risks to:
12063 (a) a pure captive insurance company; or
12064 (b) an industrial insured captive insurance company.
12065 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a
12066 captive insurance company as necessary to enable the commissioner to secure compliance with
12067 this chapter.
12068 Section 292. Section **31A-37-202** is amended to read:
12069 **31A-37-202. Permissive areas of insurance.**
12070 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of
12071 incorporation or charter, a captive insurance company may apply to the commissioner for a
12072 certificate of authority to do all insurance authorized by this title except workers' compensation
12073 insurance.
12074 (b) Notwithstanding Subsection (1)(a):
12075 (i) a pure captive insurance company may not insure a risk other than a risk of:
12076 (A) its parent or affiliate;
12077 (B) a controlled unaffiliated business; or
12078 (C) a combination of Subsections (1)(b)(i)(A) and (B);
12079 (ii) an association captive insurance company may not insure a risk other than a risk of:
12080 (A) an affiliate;
12081 (B) a member organization of its association; and

12082 (C) an affiliate of a member organization of its association;
12083 (iii) an industrial insured captive insurance company may not insure a risk other than a
12084 risk of:
12085 (A) an industrial insured that is part of the industrial insured group;
12086 (B) an affiliate of an industrial insured that is part of the industrial insured group; and
12087 (C) a controlled unaffiliated business of:
12088 (I) an industrial insured that is part of the industrial insured group; or
12089 (II) an affiliate of an industrial insured that is part of the industrial insured group;
12090 (iv) a special purpose captive insurance company may only insure a risk of its parent;
12091 (v) a captive insurance company may not provide:
12092 (A) personal motor vehicle insurance coverage;
12093 (B) homeowner's insurance coverage; or
12094 (C) a component of a coverage described in this Subsection (1)(b)(v); and
12095 (vi) a captive insurance company may not accept or cede reinsurance except as
12096 provided in Section 31A-37-303.
12097 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a
12098 special purpose captive insurance company may provide:
12099 (i) insurance;
12100 (ii) reinsurance; or
12101 (iii) both insurance and reinsurance.
12102 (2) To conduct insurance business in this state a captive insurance company shall:
12103 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
12104 insurance business in this state;
12105 (b) hold at least once each year in this state:
12106 (i) a board of directors meeting; or
12107 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;
12108 (c) maintain in this state:
12109 (i) the principal place of business of the captive insurance company; or
12110 (ii) in the case of a branch captive insurance company, the principal place of business
12111 for the branch operations of the branch captive insurance company; and
12112 (d) except as provided in Subsection (3), appoint a resident registered agent to accept

12113 service of process and to otherwise act on behalf of the captive insurance company in this state.
12114 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
12115 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable
12116 diligence be found at the registered office of the captive insurance company, the commissioner
12117 is the agent of the captive insurance company upon whom process, notice, or demand may be
12118 served.
12119 (4) (a) Before receiving a certificate of authority, a captive insurance company:
12120 (i) formed as a corporation shall file with the commissioner:
12121 (A) a certified copy of:
12122 (I) articles of incorporation or the charter of the corporation; and
12123 (II) bylaws of the corporation;
12124 (B) a statement under oath of the president and secretary of the corporation showing
12125 the financial condition of the corporation; and
12126 (C) any other statement or document required by the commissioner under Section
12127 31A-37-106;
12128 (ii) formed as a reciprocal shall:
12129 (A) file with the commissioner:
12130 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;
12131 (II) a certified copy of the subscribers' agreement of the reciprocal;
12132 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the
12133 financial condition of the reciprocal; and
12134 (IV) any other statement or document required by the commissioner under Section
12135 31A-37-106; and
12136 (B) submit to the commissioner for approval a description of the:
12137 (I) coverages;
12138 (II) deductibles;
12139 (III) coverage limits;
12140 (IV) rates; and
12141 (V) any other information the commissioner requires under Section 31A-37-106.
12142 (b) (i) If there is a subsequent material change in an item in the description required
12143 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal

12144 captive insurance company shall submit to the commissioner for approval an appropriate
12145 revision to the description required under Subsection (4)(a)(ii)(B).
12146 (ii) A reciprocal captive insurance company that is required to submit a revision under
12147 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner
12148 approves a revision of the description.
12149 (iii) A reciprocal captive insurance company shall inform the commissioner of a
12150 material change in a rate within 30 days of the adoption of the change.
12151 (c) In addition to the information required by Subsection (4)(a), an applicant captive
12152 insurance company shall file with the commissioner evidence of:
12153 (i) the amount and liquidity of the assets of the applicant captive insurance company
12154 relative to the risks to be assumed by the applicant captive insurance company;
12155 (ii) the adequacy of the expertise, experience, and character of the person who will
12156 manage the applicant captive insurance company;
12157 (iii) the overall soundness of the plan of operation of the applicant captive insurance
12158 company;
12159 (iv) the adequacy of the loss prevention programs for the following of the applicant
12160 captive insurance company:
12161 (A) a parent;
12162 (B) a member organization; or
12163 (C) an industrial insured; and
12164 (v) any other factor the commissioner:
12165 (A) adopts by rule under Section 31A-37-106; and
12166 (B) considers relevant in ascertaining whether the applicant captive insurance company
12167 will be able to meet the policy obligations of the applicant captive insurance company.
12168 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an
12169 applicant sponsored captive insurance company shall file with the commissioner:
12170 (i) a business plan at the level of detail required by the commissioner under Section
12171 31A-37-106 demonstrating:
12172 (A) the manner in which the applicant sponsored captive insurance company will
12173 account for the losses and expenses of each protected cell; and
12174 (B) the manner in which the applicant sponsored captive insurance company will report

12175 to the commissioner the financial history, including losses and expenses, of each protected cell;
12176 (ii) a statement acknowledging that the applicant sponsored captive insurance company
12177 will make all financial records of the applicant sponsored captive insurance company,
12178 including records pertaining to a protected cell, available for inspection or examination by the
12179 commissioner;
12180 (iii) a contract or sample contract between the applicant sponsored captive insurance
12181 company and a participant; and
12182 (iv) evidence that expenses will be allocated to each protected cell in an equitable
12183 manner.
12184 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected
12185 record under Title 63G, Chapter 2, Government Records Access and Management Act.
12186 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and
12187 Management Act, the commissioner may disclose information submitted pursuant to
12188 Subsection (4) to a public official having jurisdiction over the regulation of insurance in
12189 another state if:
12190 (i) the public official receiving the information agrees in writing to maintain the
12191 confidentiality of the information; and
12192 (ii) the laws of the state in which the public official serves require the information to be
12193 confidential.
12194 (c) This Subsection (5) does not apply to information provided by an industrial insured
12195 captive insurance company insuring the risks of an industrial insured group.
12196 (6) (a) A captive insurance company shall pay to the department the following
12197 nonrefundable fees established by the department under Sections 31A-3-103 and 63J-1-504:
12198 (i) a fee for examining, investigating, and processing, by a department employee, of an
12199 application for a certificate of authority made by a captive insurance company;
12200 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
12201 company is issued a certificate of authority by the department; and
12202 (iii) a certificate of authority renewal fee.
12203 (b) The commissioner may:
12204 (i) retain legal, financial, and examination services from outside the department to
12205 perform the services described in:

12206 (A) Subsection (6)(a); and
12207 (B) Section 31A-37-502; and
12208 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
12209 applicant captive insurance company.
12210 (7) If the commissioner is satisfied that the documents and statements filed by the
12211 applicant captive insurance company comply with this chapter, the commissioner may grant a
12212 certificate of authority authorizing the company to do insurance business in this state.
12213 (8) A certificate of authority granted under this section expires annually and [~~must~~]
12214 shall be renewed by July 1 of each year.
12215 Section 293. Section **31A-37-301** is amended to read:
12216 **31A-37-301. Incorporation.**
12217 (1) A pure captive insurance company or a sponsored captive insurance company shall
12218 be incorporated as a stock insurer with the capital of the pure captive insurance company or
12219 sponsored captive insurance company:
12220 (a) divided into shares; and
12221 (b) held by the stockholders of the pure captive insurance company or sponsored
12222 captive insurance company.
12223 (2) An association captive insurance company or an industrial insured captive
12224 insurance company may be:
12225 (a) incorporated as a stock insurer with the capital of the association captive insurance
12226 company or industrial insured captive insurance company:
12227 (i) divided into shares; and
12228 (ii) held by the stockholders of the association captive insurance company or industrial
12229 insured captive insurance company;
12230 (b) incorporated as a mutual insurer without capital stock, with a governing body
12231 elected by the member organizations of the association captive insurance company or industrial
12232 insured captive insurance company; or
12233 (c) organized as a reciprocal.
12234 (3) A captive insurance company may not have fewer than three incorporators of whom
12235 not fewer than two [~~must~~] shall be residents of this state.
12236 (4) (a) Before a captive insurance company formed as a corporation files the

12237 corporation's articles of incorporation with the Division of Corporations and Commercial
12238 Code, the incorporators shall obtain from the commissioner a certificate finding that the
12239 establishment and maintenance of the proposed corporation will promote the general good of
12240 the state.
12241 (b) In considering a request for a certificate under Subsection (4)(a), the commissioner
12242 shall consider:
12243 (i) the character, reputation, financial standing, and purposes of the incorporators;
12244 (ii) the character, reputation, financial responsibility, insurance experience, business
12245 qualifications of the officers and directors;
12246 (iii) any information in:
12247 (A) the application for a certificate of authority; or
12248 (B) the department's files; and
12249 (iv) other aspects the commissioner considers advisable.
12250 (5) (a) A captive insurance company formed as a corporation shall file with the
12251 Division of Corporations and Commercial Code:
12252 (i) the captive insurance company's articles of incorporation;
12253 (ii) the certificate issued pursuant to Subsection (4); and
12254 (iii) the fees required by the Division of Corporations and Commercial Code.
12255 (b) The Division of Corporations and Commercial Code shall file both the articles of
12256 incorporation and the certificate described in Subsection (4) for a captive insurance company
12257 that complies with this section.
12258 (6) (a) The organizers of a captive insurance company formed as a reciprocal insurer
12259 shall obtain from the commissioner a certificate finding that the establishment and maintenance
12260 of the proposed association will promote the general good of the state.
12261 (b) In considering a request for a certificate under Subsection (6)(a), the commissioner
12262 shall consider:
12263 (i) the character, reputation, financial standing, and purposes of the incorporators;
12264 (ii) the character, reputation, financial responsibility, insurance experience, and
12265 business qualifications of the officers and directors;
12266 (iii) any information in:
12267 (A) the application for a certificate of authority; or

12268 (B) the department's files; and
12269 (iv) other aspects the commissioner considers advisable.
12270 (7) (a) An alien captive insurance company that has received a certificate of authority
12271 to act as a branch captive insurance company shall obtain from the commissioner a certificate
12272 finding that:
12273 (i) the home state of the alien captive insurance company imposes statutory or
12274 regulatory standards in a form acceptable to the commissioner on companies transacting the
12275 business of insurance in that state; and
12276 (ii) after considering the character, reputation, financial responsibility, insurance
12277 experience, and business qualifications of the officers and directors of the alien captive
12278 insurance company, and other relevant information, the establishment and maintenance of the
12279 branch operations will promote the general good of the state.
12280 (b) After the commissioner issues a certificate under Subsection (7)(a) to an alien
12281 captive insurance company, the alien captive insurance company may register to do business in
12282 this state.
12283 (8) The capital stock of a captive insurance company incorporated as a stock insurer
12284 may not be issued at less than par value.
12285 (9) At least one of the members of the board of directors of a captive insurance
12286 company formed as a corporation shall be a resident of this state.
12287 (10) At least one of the members of the subscribers' advisory committee of a captive
12288 insurance company formed as a reciprocal insurer shall be a resident of this state.
12289 (11) (a) A captive insurance company formed as a corporation under this chapter has
12290 the privileges and is subject to the provisions of the general corporation law as well as the
12291 applicable provisions contained in this chapter.
12292 (b) If a conflict exists between a provision of the general corporation law and a
12293 provision of this chapter, this chapter shall control.
12294 (c) Except as provided in Subsection (11)(d), the provisions of this title pertaining to a
12295 merger, consolidation, conversion, mutualization, and redomestication apply in determining the
12296 procedures to be followed by a captive insurance company in carrying out any of the
12297 transactions described in those provisions.
12298 (d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the

12299 requirements for public notice and hearing in accordance with rules adopted under Section
12300 31A-37-106.
12301 (e) If a notice of public hearing is required, but no one requests a hearing, the
12302 commissioner may cancel the public hearing.
12303 (12) (a) A captive insurance company formed as a reciprocal insurer under this chapter
12304 has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this
12305 chapter.
12306 (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions
12307 of this chapter with respect to a captive insurance company, this chapter shall control.
12308 (c) To the extent a reciprocal insurer is made subject to other provisions of this title
12309 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer
12310 formed under this chapter unless the provisions are expressly made applicable to a captive
12311 insurance company under this chapter.
12312 (d) In addition to the provisions of this Subsection (12), a captive insurance company
12313 organized as a reciprocal insurer that is an industrial insured group has the privileges of Section
12314 31A-4-114 in addition to applicable provisions of this title.
12315 (13) The articles of incorporation or bylaws of a captive insurance company may not
12316 authorize a quorum of a board of directors to consist of fewer than [~~1/3~~] one-third of the fixed
12317 or prescribed number of directors as provided in Section 16-10a-824.
12318 Section 294. Section **31A-37-302** is amended to read:
12319 **31A-37-302. Investment requirements.**
12320 (1) (a) Except as provided in Subsection (1)(b), an association captive insurance
12321 company, a sponsored captive insurance company, and an industrial insured group shall
12322 comply with the investment requirements contained in this title.
12323 (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the
12324 commissioner may approve the use of alternative reliable methods of valuation and rating
12325 under Section 31A-37-106 for:
12326 (i) an association captive insurance company;
12327 (ii) a sponsored captive insurance company; or
12328 (iii) an industrial insured group.
12329 (2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or

12330 industrial insured captive insurance company is not subject to any restrictions on allowable
12331 investments contained in this title.
12332 (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section
12333 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:
12334 (i) a pure captive insurance company; or
12335 (ii) an industrial insured captive insurance company.
12336 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may
12337 not make loans to:
12338 (A) the parent company of the captive insurance company; or
12339 (B) an affiliate of the captive insurance company.
12340 (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make
12341 loans to:
12342 (A) the parent company of the pure captive insurance company; or
12343 (B) an affiliate of the pure captive insurance company.
12344 (b) A loan under Subsection (3)(a):
12345 (i) may be made only on the prior written approval of the commissioner; and
12346 (ii) [~~must~~] shall be evidenced by a note in a form approved by the commissioner.
12347 (c) A pure captive insurance company may not make a loan from:
12348 (i) the paid-in capital required under Subsection 31A-37-204(1); or
12349 (ii) the free surplus required under Subsection 31A-37-205(1).
12350 Section 295. Section **31A-37-306** is amended to read:
12351 **31A-37-306. Conversion or merger.**
12352 (1) An association captive insurance company or industrial insured group formed as a
12353 stock or mutual corporation may be:
12354 (a) converted to a reciprocal insurer in accordance with a plan and this section; or
12355 (b) merged with and into a reciprocal insurer in accordance with a plan and this
12356 section.
12357 (2) A plan for a conversion or merger under this section:
12358 (a) shall be fair and equitable to:
12359 (i) the shareholders, in the case of a stock insurer; or
12360 (ii) the policyholders, in the case of a mutual insurer; and

12361 (b) shall provide for the purchase of:
12362 (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the
12363 same manner and subject to the same rights and conditions as are provided a dissenting
12364 shareholder; or
12365 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in
12366 substantially the same manner and subject to the same rights and conditions as are provided a
12367 dissenting policyholder.
12368 (3) In the case of a conversion authorized under Subsection (1):
12369 (a) the conversion [~~must~~] shall be accomplished under a reasonable plan and procedure
12370 that are approved by the commissioner;
12371 (b) the commissioner may not approve the plan of conversion under this section unless
12372 the plan:
12373 (i) satisfies Subsections (2) and (6);
12374 (ii) provides for the conversion of existing stockholder or policyholder interests into
12375 subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or
12376 policyholder interests in the stock or mutual insurer; and
12377 (iii) is approved:
12378 (A) in the case of a stock insurer, by a majority of the shares entitled to vote
12379 represented in person or by proxy at a duly called regular or special meeting at which a quorum
12380 is present; or
12381 (B) in the case of a mutual insurer, by a majority of the voting interests of
12382 policyholders represented in person or by proxy at a duly called regular or special meeting at
12383 which a quorum is present;
12384 (c) the commissioner shall approve a plan of conversion if the commissioner finds that
12385 the conversion will promote the general good of the state in conformity with the standards
12386 under Subsection 31A-37-301(4);
12387 (d) if the commissioner approves a plan of conversion, the commissioner shall amend
12388 the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and
12389 issue the amended certificate of authority to the company's attorney-in-fact;
12390 (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the
12391 commissioner, the conversion is effective; and

12392 (f) upon the effectiveness of the conversion:
12393 (i) the corporate existence of the converting insurer shall cease; and
12394 (ii) the resulting reciprocal insurer shall notify the Division of Corporations and
12395 Commercial Code of the conversion.
12396 (4) A merger authorized under Subsection (1) shall be accomplished substantially in
12397 accordance with the procedures set forth in this title except that, solely for purposes of the
12398 merger:
12399 (a) the plan or merger shall satisfy Subsection (2);
12400 (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the
12401 board of directors of a stock or mutual insurance company;
12402 (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of
12403 a mutual insurance company;
12404 (d) if a subscribers' advisory committee does not have a president or secretary, the
12405 officers of the committee having substantially equivalent duties are the president and secretary
12406 of the committee;
12407 (e) the commissioner shall approve the articles of merger if the commissioner finds that
12408 the merger will promote the general good of the state in conformity with the standards under
12409 Subsection 31A-37-301(4);
12410 (f) notwithstanding Sections 31A-37-204 and 31A-37-205, the commissioner may
12411 permit the formation, without capital and surplus, of a captive insurance company organized as
12412 a reciprocal insurer, into which an existing captive insurance company may be merged to
12413 facilitate a transaction under this section, if there is no more than one authorized insurance
12414 company surviving the merger; and
12415 (g) an alien insurer may be a party to a merger authorized under Subsection (1) if:
12416 (i) the requirements for the merger between a domestic and a foreign insurer under
12417 Chapter 16, Insurance Holding Companies, are applied to the merger; and
12418 (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding
12419 Companies.
12420 (5) If the commissioner approves the articles of merger under this section:
12421 (a) the commissioner shall endorse the commissioner's approval on the articles; and
12422 (b) the surviving insurer shall present the name to the Division of Corporations and

12423 Commercial Code.
12424 (6) (a) Except as provided in Subsection (6)(b), a conversion authorized under
12425 Subsection (1) [~~must~~] shall provide for a hearing, of which notice has been given to the insurer,
12426 its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the
12427 case of a mutual insurer, all of whom have the right to appear at the hearing.
12428 (b) Notwithstanding Subsection (6)(a), the commissioner may waive or modify the
12429 requirements for the hearing.
12430 (c) If a notice of hearing is required, but no hearing is requested, after notice has been
12431 given under Subsection (6)(a), the commissioner may cancel the hearing.
12432 Section 296. Section **31A-37-402** is amended to read:
12433 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
12434 **mandatory.**
12435 (1) A sponsor of a sponsored captive insurance company shall be:
12436 (a) an insurer authorized or approved under the laws of a state;
12437 (b) a reinsurer authorized or approved under the laws of a state;
12438 (c) a captive insurance company holding a certificate of authority under this chapter;
12439 (d) an insurance holding company that:
12440 (i) controls an insurer licensed pursuant to the laws of a state; and
12441 (ii) is subject to registration pursuant to the holding company system of laws of the
12442 state of domicile of the insurer described in Subsection (1)(d)(i); or
12443 (e) another person approved by the commissioner after finding that the approval of the
12444 person as a sponsor is not inconsistent with the purposes of this chapter.
12445 (2) (a) The business written by a sponsored captive insurance company with respect to
12446 a protected cell shall be fronted by an insurer that is:
12447 (i) authorized or approved:
12448 (A) under the laws of a state; or
12449 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
12450 insurance company licensed pursuant to the laws of a state;
12451 (ii) reinsured by a reinsurer authorized or approved by this state; or
12452 (iii) subject to Subsection (2)(b), secured by a trust fund:
12453 (A) in the United States;

12454 (B) for the benefit of policyholders and claimants; and
12455 (C) funded by an irrevocable letter of credit or other asset acceptable to the
12456 commissioner.
12457 (b) (i) The amount of security provided by the trust fund described in Subsection
12458 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,
12459 including:
12460 (A) reserves for losses;
12461 (B) allocated loss adjustment expenses;
12462 (C) incurred but unreported losses; and
12463 (D) unearned premiums for business written through the participant's protected cell.
12464 (ii) The commissioner may require the sponsored captive insurance company to
12465 increase the funding of a trust established pursuant to this Subsection (2).
12466 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of
12467 credit, the letter of credit [~~must~~] shall be established, issued, or confirmed by a bank that is:
12468 (A) chartered in this state;
12469 (B) a member of the federal reserve system; or
12470 (C) chartered by another state if that state-chartered bank is acceptable to the
12471 commissioner.
12472 (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a
12473 form and upon terms approved by the commissioner.
12474 (3) A risk retention group may not be either a sponsor or a participant of a sponsored
12475 captive insurance company.
12476 Section 297. Section **31A-37-601** is amended to read:
12477 **31A-37-601. Incorporation of a captive reinsurance company.**
12478 (1) A captive reinsurance company shall be incorporated as a stock insurer with its
12479 capital:
12480 (a) divided into shares; and
12481 (b) held by the captive reinsurance company's shareholders.
12482 (2) (a) A captive reinsurance company may not have fewer than three incorporators.
12483 (b) At least two of the incorporators of a captive reinsurance company [~~must~~] shall be
12484 residents of this state.

12485 (3) (a) Before the articles of incorporation are filed with the Division of Corporations
12486 and Commercial Code, the incorporators shall obtain from the commissioner a certificate of
12487 finding that the establishment and maintenance of the proposed corporation promotes the
12488 general good of this state.
12489 (b) In considering a request for a certificate under Subsection (3)(a), the commissioner
12490 shall consider:
12491 (i) the character, reputation, financial standing, and purposes of the incorporators;
12492 (ii) the character, reputation, financial responsibility, insurance experience, and
12493 business qualifications of the officers and directors; and
12494 (iii) other factors the commissioner considers advisable.
12495 (4) The capital stock of a captive reinsurance company [~~must~~] shall be issued at par
12496 value or greater.
12497 (5) At least one of the members of the board of directors of a captive reinsurance
12498 company incorporated in this state [~~must~~] shall be a resident of this state.
12499 Section 298. Section **31A-37a-205** is amended to read:
12500 **31A-37a-205. Sponsored captives.**
12501 In addition to the other provisions of this chapter, this section applies to a sponsored
12502 captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a
12503 certificate of authority as a special purpose financial captive insurance company pursuant to
12504 this chapter.
12505 (1) A sponsored captive insurance company may have a certificate of authority as a
12506 special purpose financial captive insurance company under this chapter.
12507 (2) (a) For purposes of a sponsored captive insurance company having a certificate of
12508 authority as a special purpose financial captive insurance company, "general account" means
12509 the assets and liabilities of the sponsored captive insurance company not attributable to a
12510 protected cell.
12511 (b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored
12512 captive insurance company having a certificate of authority as a special purpose financial
12513 captive insurance company, the definition of "insolvency" and "insolvent" in Section
12514 31A-37a-102 shall be applied separately to:
12515 (i) each protected cell; and

12516 (ii) the special purpose financial captive insurance company's general account.
12517 (3) (a) A participant in a sponsored captive insurance company having a certificate of
12518 authority as a special purpose financial captive insurance company [~~must~~] shall be a ceding
12519 insurer, unless approved by the commissioner before a person becomes a participant.
12520 (b) A change in a participant in a sponsored captive insurance company having a
12521 certificate of authority as a special purpose financial captive insurance company is subject to
12522 prior approval by the commissioner.
12523 (4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance
12524 company that is a sponsored captive insurance company may issue a security to a person not
12525 described in Section 31A-37-401 if the issuance to that person is approved by the
12526 commissioner before the issuance of the security.
12527 (5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company
12528 having a certificate of authority as a special purpose financial captive insurance company shall:
12529 (a) at the time of initial application for a certificate of authority as a special purpose
12530 financial captive insurance company, possess unimpaired paid-in capital and surplus of not less
12531 than $500,000; and
12532 (b) maintain at least $500,000 of unimpaired paid-in capital and surplus of not less
12533 than $500,000 during the time that it holds a certificate of authority under this chapter.
12534 (6) (a) For purposes of a sponsored captive insurance company having a certificate of
12535 authority as a special purpose financial captive insurance company, this Subsection (6) applies
12536 to:
12537 (i) a security issued by the special purpose financial captive insurance company with
12538 respect to a protected cell; or
12539 (ii) a contract or obligation of the special purpose financial captive insurance company
12540 with respect to a protected cell.
12541 (b) A sponsored captive insurance company having a certificate of authority as a
12542 special purpose financial captive insurance company shall include with a security, contract, or
12543 obligation described in Subsection (6)(a):
12544 (i) the designation of the protected cell; and
12545 (ii) a disclosure in a form and content satisfactory to the commissioner to the effect that
12546 the holder of the security or a counterparty to the contract or obligation has no right or recourse

12547 against the special purpose financial captive insurance company and its assets other than
12548 against an asset properly attributable to the protected cell.
12549 (c) Notwithstanding the requirements of this Subsection (6) and subject to other
12550 statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a
12551 creditor, ceding insurer, or another person may not use a failure to include a disclosure
12552 described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:
12553 (i) the general account of the special purpose financial captive insurance company; or
12554 (ii) the assets of another protected cell of the special financial captive insurance
12555 company.
12556 (7) In addition to Section 31A-37-401, a sponsored captive insurance company having
12557 a certificate of authority as a special purpose financial captive insurance company is subject to
12558 the following with respect to a protected cell:
12559 (a) (i) A sponsored captive insurance company having a certificate of authority as a
12560 special purpose financial captive insurance company shall establish a protected cell only for the
12561 purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding
12562 insurer with the intent of facilitating an insurance securitization.
12563 (ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a
12564 certificate of authority as a special purpose financial captive insurance company shall establish
12565 a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).
12566 (iii) A sponsored captive insurance company having a certificate of authority as a
12567 special purpose financial captive insurance company shall establish a separate protected cell
12568 with respect to each reinsurance contract that is funded in whole or in part by a separate
12569 insurance securitization transaction.
12570 (b) A sponsored captive insurance company having a certificate of authority as a
12571 special purpose financial captive insurance company may not sale, exchange, or transfer an
12572 asset by, between, or among any of its protected cells without the prior approval of the
12573 commissioner.
12574 (8) (a) A sponsored captive insurance company having a certificate of authority as a
12575 special purpose financial captive insurance company shall attribute an asset or liability to a
12576 protected cell and to the general account in accordance with the plan of operation approved by
12577 the commissioner.

12578 (b) Except as provided by Subsection (8)(a), a sponsored captive insurance company
12579 having a certificate of authority as a special purpose financial captive insurance company may
12580 not attribute an asset or liability between:
12581 (i) its general account and a protected cell; or
12582 (ii) its protected cells.
12583 (c) A sponsored captive insurance company having a certificate of authority as a
12584 special purpose financial captive insurance company shall attribute:
12585 (i) an insurance obligation, asset, or liability relating to a reinsurance contract entered
12586 into with respect to a protected cell; and
12587 (ii) an insurance securitization transaction related to the obligation, asset, or liability
12588 described in Subsection (8)(c)(i), including a security issued by the special purpose financial
12589 captive insurance company as part of the insurance securitization, to the protected cell.
12590 (d) The following shall reflect an insurance obligation, asset, or liability relating to a
12591 reinsurance contract and the insurance securitization transaction that are attributed to a
12592 protected cell:
12593 (i) a right, benefit, obligation, or a liability of a security attributable to a protected cell
12594 described in Subsection (8)(c);
12595 (ii) the performance under a reinsurance contract and the related insurance
12596 securitization transaction; and
12597 (iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation
12598 agreement to which the special purpose financial captive insurance company is a party,
12599 including a payment made by or due to be made to the special purpose financial captive
12600 insurance company pursuant to the terms of the tax allocation agreement.
12601 (9) In addition to Section 31A-37a-502:
12602 (a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored
12603 captive insurance company having a certificate of authority as a special purpose financial
12604 captive insurance company.
12605 (b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer
12606 Receivership Act, with respect to a protected cell of a sponsored captive insurance company
12607 having a certificate of authority as a special purpose financial captive insurance company may
12608 not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with

12609 respect to:
12610 (i) another protected cell of the special purpose financial captive insurance company;
12611 or
12612 (ii) the special purpose financial captive insurance company's general account.
12613 (c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose
12614 financial captive insurance company shall ensure that the assets attributable to one protected
12615 cell are not applied to the liabilities attributable to:
12616 (A) another protected cell; or
12617 (B) the special purpose financial captive insurance company's general account.
12618 (ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more
12619 than one protected cell, the receiver shall deal with the asset or liability in accordance with the
12620 terms of a relevant governing instrument or contract.
12621 (d) The insolvency of a protected cell of a sponsored captive insurance company
12622 having a certificate of authority as a special purpose financial captive insurance company may
12623 not be the sole basis for the commissioner to prohibit:
12624 (i) a payment by the special purpose financial captive insurance company made
12625 pursuant to a special purpose financial captive insurance company security or reinsurance
12626 contract with respect to another protected cell; or
12627 (ii) an action required to make a payment described in Subsection (9)(d)(i).
12628 Section 299. Section **32B-1-407 (Effective 07/01/11)** is amended to read:
12629 **32B-1-407 (Effective 07/01/11). Verification of proof of age by applicable**
12630 **licensees.**
12631 (1) Notwithstanding any other provision of this part, an applicable licensee shall
12632 require that an authorized person under the applicable licensee verify proof of age as provided
12633 in this section.
12634 (2) An authorized person is required to verify proof of age under this section before an
12635 individual who appears to be 35 years of age or younger:
12636 (a) gains admittance to the premises of a social club licensee; or
12637 (b) procures an alcoholic product on the premises of a dining club licensee.
12638 (3) To comply with Subsection (2), an authorized person shall:
12639 (a) request the individual present proof of age; and

12640 (b) (i) verify the validity of the proof of age electronically under the verification
12641 program created in Subsection (4); or
12642 (ii) if the proof of age cannot be electronically verified as provided in Subsection
12643 (3)(b)(i), request that the individual comply with a process established by the commission by
12644 rule.
12645 (4) The commission shall establish by rule an electronic verification program that
12646 includes the following:
12647 (a) the specifications for the technology used by the applicable licensee to
12648 electronically verify proof of age, including that the technology display to the person described
12649 in Subsection (1) no more than the following for the individual who presents the proof of age:
12650 (i) the name;
12651 (ii) the age;
12652 (iii) the number assigned to the individual's proof of age by the issuing authority;
12653 (iv) the birth date;
12654 (v) the gender; and
12655 (vi) the status and expiration date of the individual's proof of age; and
12656 (b) the security measures that [~~must~~] shall be used by an applicable licensee to ensure
12657 that information obtained under this section is:
12658 (i) used by the applicable licensee only for purposes of verifying proof of age in
12659 accordance with this section; and
12660 (ii) retained by the applicable licensee for seven days after the day on which the
12661 applicable licensee obtains the information.
12662 (5) (a) An applicable licensee may not disclose information obtained under this section
12663 except as provided under this title.
12664 (b) Information obtained under this section is considered a record for any purpose
12665 under Chapter 5, Part 3, Retail Licensee Operational Requirements.
12666 Section 300. Section **32B-1-505 (Effective 07/01/11)** is amended to read:
12667 **32B-1-505 (Effective 07/01/11). Sexually oriented entertainer.**
12668 (1) Subject to the requirements of this part, live entertainment is permitted on premises
12669 or at an event regulated by the commission.
12670 (2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit a

12671 person to:
12672 (a) appear or perform in a state of nudity;
12673 (b) perform or simulate an act of:
12674 (i) sexual intercourse;
12675 (ii) masturbation;
12676 (iii) sodomy;
12677 (iv) bestiality;
12678 (v) oral copulation;
12679 (vi) flagellation; or
12680 (vii) a sexual act that is prohibited by Utah law; or
12681 (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.
12682 (3) A sexually oriented entertainer may perform in a state of seminudity:
12683 (a) only in:
12684 (i) a tavern; or
12685 (ii) a social club license premises; and
12686 (b) only if:
12687 (i) the windows, doors, and other apertures to the premises are darkened or otherwise
12688 constructed to prevent anyone outside the premises from seeing the performance; and
12689 (ii) the outside entrance doors of the premises remain unlocked.
12690 (4) A sexually oriented entertainer may perform only upon a stage or in a designated
12691 performance area that is:
12692 (a) approved by the commission in accordance with rules made by the commission;
12693 (b) configured so as to preclude a patron from:
12694 (i) touching the sexually oriented entertainer; or
12695 (ii) placing any money or object on or within the performance attire or the person of the
12696 sexually oriented entertainer; and
12697 (c) configured so as to preclude the sexually oriented entertainer from touching a
12698 patron.
12699 (5) A sexually oriented entertainer may not touch a patron:
12700 (a) during the sexually oriented entertainer's performance; or
12701 (b) while the sexually oriented entertainer is dressed in performance attire.

12702 (6) A sexually oriented entertainer, while in the portion of the premises used by
12703 patrons, [~~must~~] shall be dressed in opaque clothing which covers and conceals the sexually
12704 oriented entertainer's performance attire from the top of the breast to the knee.
12705 (7) A patron may not be on the stage or in the performance area while a sexually
12706 oriented entertainer is appearing or performing on the stage or in the performance area.
12707 (8) A patron may not:
12708 (a) touch a sexually oriented entertainer:
12709 (i) during the sexually oriented entertainer's performance; or
12710 (ii) while the sexually oriented entertainer is dressed in performance attire; or
12711 (b) place money or any other object on or within the performance attire or the person of
12712 the sexually oriented entertainer.
12713 (9) A minor may not be on premises described in Subsection (3).
12714 (10) A person who appears or performs for the entertainment of patrons on premises or
12715 at an event regulated by the commission that is not a tavern or social club licensee:
12716 (a) may not appear or perform in a state of nudity or a state of seminudity; and
12717 (b) may appear or perform in opaque clothing that completely covers the person's
12718 genitals, pubic area, and anus if the covering:
12719 (i) is not less than the following at its widest point:
12720 (A) four inches coverage width in the front of the human body; and
12721 (B) five inches coverage width in the back of the human body;
12722 (ii) does not taper to less than one inch wide at the narrowest point; and
12723 (iii) if covering a female, completely covers the breast below the top of the areola.
12724 Section 301. Section **32B-6-407 (Effective 07/01/11)** is amended to read:
12725 **32B-6-407 (Effective 07/01/11). Specific operational requirements for equity club**
12726 **license or fraternal club license.**
12727 (1) For purposes of this section only:
12728 (a) "Club licensee" means an equity club licensee or fraternal club licensee.
12729 (b) "Club licensee" does not include a dining club licensee or social club licensee.
12730 (2) (a) A club licensee shall have a governing body that:
12731 (i) consists of three or more members of the club; and
12732 (ii) holds regular meetings to:

12733 (A) review membership applications; and
12734 (B) conduct other business as required by the bylaws or house rules of the club.
12735 (b) (i) A club licensee shall maintain a minute book that is posted currently by the club
12736 licensee.
12737 (ii) The minute book required by this Subsection (2) shall contain the minutes of a
12738 regular or special meeting of the governing body.
12739 (3) A club licensee may admit an individual as a member only on written application
12740 signed by the person, subject to:
12741 (a) the person paying an application fee; and
12742 (b) investigation, vote, and approval of a quorum of the governing body.
12743 (4) A club licensee shall:
12744 (a) record an admission of a member in the official minutes of a regular meeting of the
12745 governing body; and
12746 (b) whether approved or disapproved, file an application as a part of the official records
12747 of the club licensee.
12748 (5) The spouse of a member of a club licensee has the rights and privileges of the
12749 member:
12750 (a) to the extent permitted by the bylaws or house rules of the club licensee; and
12751 (b) except to the extent restricted by this title.
12752 (6) A minor child of a member of a club licensee has the rights and privileges of the
12753 member:
12754 (a) to the extent permitted by the bylaws or house rules of the club licensee; and
12755 (b) except to the extent restricted by this title.
12756 (7) A club licensee shall maintain:
12757 (a) a current and complete membership record showing:
12758 (i) the date of application of a proposed member;
12759 (ii) a member's address;
12760 (iii) the date the governing body approved a member's admission;
12761 (iv) the date initiation fees and dues are assessed and paid; and
12762 (v) the serial number of the membership card issued to a member;
12763 (b) a membership list; and

12764 (c) a current record indicating when a member is removed as a member or resigns.
12765 (8) (a) A club licensee shall have bylaws or house rules that include provisions
12766 respecting the following:
12767 (i) standards of eligibility for members;
12768 (ii) limitation of members, consistent with the nature and purpose of the club;
12769 (iii) the period for which dues are paid, and the date upon which the period expires;
12770 (iv) provisions for removing a member from the club membership for the nonpayment
12771 of dues or other cause;
12772 (v) provisions for guests; and
12773 (vi) application fees and membership dues.
12774 (b) A club licensee shall maintain a current copy of the club licensee's current bylaws
12775 and current house rules.
12776 (c) A club licensee shall maintain its bylaws or house rules, and any amendments to
12777 those records, on file with the department at all times.
12778 (9) A club licensee may, in its discretion, allow an individual to be admitted to or use
12779 the club licensed premises as a guest subject to the following conditions:
12780 (a) the individual is allowed to use the club licensee premises only to the extent
12781 permitted by the club licensee's bylaws or house rules;
12782 (b) the individual [~~must~~] shall be previously authorized by a member of the club who
12783 agrees to host the individual as a guest into the club;
12784 (c) the individual has only those privileges derived from the individual's host for the
12785 duration of the individual's visit to the club licensee premises; and
12786 (d) a club licensee or staff of the club licensee may not enter into an agreement or
12787 arrangement with a club member to indiscriminately host a member of the general public into
12788 the club licensee premises as a guest.
12789 (10) Notwithstanding Subsection (9), an individual may be allowed as a guest in a club
12790 licensed premises without a host if:
12791 (a) (i) the club licensee is an equity club licensee; and
12792 (ii) the individual is a member of an equity club licensee that has reciprocal guest
12793 privileges with the equity club licensee for which the individual is a guest; or
12794 (b) (i) the club licensee is a fraternal club licensee; and

12795 (ii) the individual is a member of the same fraternal organization as the fraternal club
12796 licensee for which the individual is a guest.
12797 (11) Unless the patron is a member or guest, a club licensee may not:
12798 (a) sell, offer for sale, or furnish an alcoholic product to the patron; or
12799 (b) allow the patron to be admitted to or use the licensed premises.
12800 (12) A minor may not be a member, officer, director, or trustee of a club licensee.
12801 (13) Public advertising related to a club licensee by the following shall clearly identify
12802 a club as being "a club for members":
12803 (a) the club licensee;
12804 (b) staff of the club licensee; or
12805 (c) a person under a contract or agreement with the club licensee.
12806 Section 302. Section **32B-8-304 (Effective 07/01/11)** is amended to read:
12807 **32B-8-304 (Effective 07/01/11). Specific operational requirements for resort spa**
12808 **sublicense.**
12809 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
12810 Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a
12811 resort spa sublicense shall comply with this section.
12812 (b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a)
12813 may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and
12814 Enforcement Act, against:
12815 (i) a retail licensee;
12816 (ii) staff of the retail licensee;
12817 (iii) a person otherwise related to a resort spa sublicense; or
12818 (iv) any combination of the persons listed in this Subsection (1)(b).
12819 (2) A person operating under a resort spa sublicense shall display in a prominent place
12820 in the resort spa a list of the types and brand names of liquor being furnished through its
12821 calibrated metered dispensing system.
12822 (3) (a) For purposes of the resort spa sublicense, the resort licensee shall ensure that a
12823 record required by this title is maintained, and a record is maintained or used for the resort spa
12824 sublicense:
12825 (i) as the department requires; and

12826 (ii) for a minimum period of three years.
12827 (b) A record is subject to inspection by an authorized representative of the commission
12828 and the department.
12829 (c) A resort licensee shall allow the department, through an auditor or examiner of the
12830 department, to audit the records for a resort spa sublicense at the times the department
12831 considers advisable.
12832 (d) The department shall audit the records for a resort spa sublicense at least once
12833 annually.
12834 (e) Section 32B-1-205 applies to a record required to be made, maintained, or used in
12835 accordance with this Subsection (3).
12836 (4) (a) A person operating under a resort spa sublicense may not sell, offer for sale, or
12837 furnish liquor at a resort spa during a period that:
12838 (i) begins at 1 a.m.; and
12839 (ii) ends at 9:59 a.m.
12840 (b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish
12841 beer during the hours specified in Chapter 6, Part 7, On-premise Beer Retailer License, for an
12842 on-premise beer retailer.
12843 (c) (i) Notwithstanding Subsections (4)(a) and (b), a resort spa shall remain open for
12844 one hour after the resort spa ceases the sale and furnishing of an alcoholic product during
12845 which time a person at the resort spa may finish consuming:
12846 (A) a single drink containing spirituous liquor;
12847 (B) a single serving of wine not exceeding five ounces;
12848 (C) a single serving of heavy beer;
12849 (D) a single serving of beer not exceeding 26 ounces; or
12850 (E) a single serving of a flavored malt beverage.
12851 (ii) A resort spa is not required to remain open:
12852 (A) after all persons have vacated the resort spa sublicense premises; or
12853 (B) during an emergency.
12854 (d) A person operating under a resort spa sublicense may not allow a person to remain
12855 on the resort spa sublicense premises to consume an alcoholic product on the resort spa
12856 sublicense premises during a period that:

12857 (i) begins at 2 a.m.; and
12858 (ii) ends at 9:59 a.m.
12859 (5) A minor may not be admitted into, use, or be on:
12860 (a) the sublicense premises of a resort spa unless accompanied by a person 21 years of
12861 age or older; or
12862 (b) a lounge or bar area of the resort spa sublicense premises.
12863 (6) A resort spa shall have food available at all times when an alcoholic product is sold,
12864 offered for sale, furnished, or consumed on the resort spa sublicense premises.
12865 (7) (a) Subject to the other provisions of this Subsection (7), a patron may not have
12866 more than two alcoholic products of any kind at a time before the patron.
12867 (b) A resort spa patron may not have two spirituous liquor drinks before the resort spa
12868 patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for
12869 the other spirituous liquor drink.
12870 (c) An individual portion of wine is considered to be one alcoholic product under this
12871 Subsection (7).
12872 (8) (a) An alcoholic product may only be consumed at a table or counter.
12873 (b) An alcoholic product may not be served to or consumed by a patron at a bar.
12874 (9) (a) A person operating under a resort spa sublicense shall have available on the
12875 resort spa sublicense premises for a patron to review at the time that the patron requests it, a
12876 written alcoholic product price list or a menu containing the price of an alcoholic product sold
12877 or furnished by the resort spa including:
12878 (i) a set-up charge;
12879 (ii) a service charge; or
12880 (iii) a chilling fee.
12881 (b) A charge or fee made in connection with the sale, service, or consumption of liquor
12882 may be stated in food or alcoholic product menus including:
12883 (i) a set-up charge;
12884 (ii) a service charge; or
12885 (iii) a chilling fee.
12886 (10) (a) A resort licensee shall own or lease premises suitable for the resort spa's
12887 activities.

12888 (b) A resort licensee may not maintain premises in a manner that barricades or conceals
12889 the resort spa sublicense's operation.
12890 (11) Subject to the other provisions of this section, a person operating under a resort
12891 spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or use
12892 the resort spa sublicense premises other than:
12893 (a) a resident;
12894 (b) a public customer who holds a valid customer card issued under Subsection (13); or
12895 (c) an invitee.
12896 (12) A person operating under a resort spa sublicense may allow an individual to be
12897 admitted to or use the resort spa sublicense premises as an invitee subject to the following
12898 conditions:
12899 (a) the individual [~~must~~] shall be previously authorized by one of the following who
12900 agrees to host the individual as an invitee into the resort spa:
12901 (i) a resident; or
12902 (ii) a public customer as described in Subsection (11);
12903 (b) the individual has only those privileges derived from the individual's host for the
12904 duration of the invitee's visit to the resort spa; and
12905 (c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter
12906 into an agreement or arrangement with a resident or public customer to indiscriminately host a
12907 member of the general public into the resort spa as an invitee.
12908 (13) A person operating under a resort spa sublicense may issue a customer card to
12909 allow an individual to enter and use the resort spa sublicense premises on a temporary basis
12910 under the following conditions:
12911 (a) the resort spa may not issue a customer card for a time period that exceeds three
12912 weeks;
12913 (b) the resort spa shall assess a fee to a public customer for a customer card;
12914 (c) the resort spa may not issue a customer card to a minor; and
12915 (d) a public customer may not host more than seven invitees at one time.
12916 Section 303. Section **34-19-1** is amended to read:
12917 **34-19-1. Declaration of policy.**
12918 In the interpretation and application of this chapter, the public policy of this state is

12919 declared as follows:
12920 (1) It [~~shall not be~~] is not unlawful for employees to organize themselves into or carry
12921 on labor unions for the purpose of lessening hours of labor, increasing wages, bettering the
12922 conditions of members, or carrying out the legitimate purposes of such organizations as freely
12923 as they could do if acting singly.
12924 (2) The labor of a human being is not a commodity or article of commerce. Nothing
12925 contained in the antitrust laws shall be construed to forbid the existence and operation of labor,
12926 agricultural or horticultural organizations, instituted for the purpose of mutual help and not
12927 having capital stock or conducted for profit, or to forbid or restrain individual members of such
12928 organizations from lawfully carrying out the legitimate object thereof; nor shall such
12929 organizations or membership in them be held to be illegal combinations or conspiracies in
12930 restraint of trade under the antitrust laws.
12931 (3) Negotiations of terms and conditions of labor should result from voluntary
12932 agreement between employer and employee. Governmental authority has permitted and
12933 encouraged employers to organize in the corporate and other forms of capital control. In
12934 dealing with such employers the individual unorganized worker is helpless to exercise actual
12935 liberty of contract and to protect [~~his~~] the individual unorganized worker's freedom of labor and
12936 thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary
12937 that the individual employee have full freedom of association, self-organization, and
12938 designation of representatives of [~~his~~] the individual employee's own choosing to negotiate the
12939 terms and conditions of [~~his~~] the individual employee's employment, and that [~~he~~] the
12940 individual employee shall be free from the interference, restraint or coercion of employers of
12941 labor, or their agents, in the designation of such representatives or in self-organization or in
12942 other concerted activities for the purpose of collective bargaining or their mutual aid or
12943 protection.
12944 Section 304. Section **34-19-9** is amended to read:
12945 **34-19-9. Injunctive relief -- Contempt -- Rights of accused.**
12946 In all cases where a person shall be charged with indirect criminal contempt for
12947 violation of a restraining order or injunction issued by a court, or judge or judges of it, the
12948 accused shall enjoy:
12949 (1) the rights as to admission to bail that are accorded to persons accused of crime;

12950 (2) the right to be notified of the accusation and a reasonable time to make a defense,
12951 provided the alleged contempt is not committed in the immediate view of or in the presence of
12952 the court;
12953 (3) upon demand, the right to a speedy and public trial by an impartial jury of the
12954 judicial district in which the contempt shall have been committed. This requirement [~~shall not~~]
12955 may not be construed to apply to contempts committed in the presence of the court or so near to
12956 it as to interfere directly with the administration of justice or to apply to the misbehavior,
12957 misconduct, or disobedience of any officer of the court in respect to the writs, orders or process
12958 of the court; and
12959 (4) the right to file with the court a demand for the retirement of the judge sitting in the
12960 proceeding, if the contempt arises from an attack upon the character or conduct of such judge
12961 and if the attack occurred otherwise than in open court. Upon the filing of any such demand the
12962 judge shall proceed no further, but another judge shall be designated by the presiding judge of
12963 the court. The demand shall be filed prior to the hearing in the contempt proceeding.
12964 Section 305. Section **34-19-10** is amended to read:
12965 **34-19-10. Injunctive relief -- Contempt -- Penalty.**
12966 Punishment for a contempt, specified in Section 34-19-9, may be by fine, not exceeding
12967 $100, or by imprisonment not exceeding 15 days in the jail of the county where the court is
12968 sitting, or both, in the discretion of the court. Where a person is committed to jail for the
12969 nonpayment of such a fine, [~~he must~~] the person shall be discharged at the expiration of 15
12970 days; but [~~where he~~] if the person is also committed for a definite time, the 15 days [~~must~~] shall
12971 be computed from the expiration of the definite time.
12972 Section 306. Section **34-19-13** is amended to read:
12973 **34-19-13. Agreements against public policy.**
12974 [~~Every undertaking or promise~~] Each of the following undertakings or promises
12975 hereafter made, whether written or oral, express or implied, between any employee or
12976 prospective employee and [~~his~~] the employee's or prospective employee's employer,
12977 prospective employer, or any other individual, firm, company, association, or corporation,
12978 [~~whereby:~~] is contrary to public policy and may not be a basis for the granting of legal or
12979 equitable relief by any court against a party to the undertaking or promise, or against any other
12980 person who may advise, urge, or induce, without fraud, violence or threat of violence, either

12981 party to act in disregard of the undertaking or promise:
12982 (1) [~~either party thereto undertakes or promises~~] an undertaking or promise by either
12983 party to join or to remain a member of some specific labor organization or organizations or to
12984 join or remain a member of some specific employer organization or any employer organization
12985 or organizations; [~~and/or~~]
12986 (2) [~~either party thereto undertakes or promises not to~~] an undertaking or promise by
12987 either party to not join or not [~~to~~] remain a member of some specific labor organization or any
12988 labor organization or organizations, or of some specific employer organization or any employer
12989 organization or organizations; [~~and/or~~] or
12990 (3) [~~either party thereto undertakes or promises that he will~~] an undertaking or promise
12991 by either party to withdraw from an employment relation in the event that [~~he~~] the party joins
12992 or remains a member of some specific labor organization or any labor organization or
12993 organizations, or of some specific employer organization or any employer organization or
12994 organizations[~~; is hereby declared to be contrary to public policy and shall not afford any basis~~
12995 ~~for the granting of legal or equitable relief by any court against a party to such undertaking or~~
12996 ~~promise, or against any other persons who may advise, urge or induce, without fraud, violence~~
12997 ~~or threat thereof, either party thereto to act in disregard of such undertaking or promise~~].
12998 Section 307. Section **34-20-3** is amended to read:
12999 **34-20-3. Labor relations board.**
13000 (1) (a) There is created the Labor Relations Board consisting of the following:
13001 (i) the commissioner of the Labor Commission;
13002 (ii) two members appointed by the governor with the consent of the Senate consisting
13003 of:
13004 (A) a representative of employers, in making this appointment the governor shall
13005 consider nominations from employer organizations; and
13006 (B) a representative of employees, in making this appointment the governor shall
13007 consider nominations from employee organizations.
13008 (b) (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed
13009 under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed
13010 member to a four-year term.
13011 (ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the

13012 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
13013 members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every
13014 two years.
13015 (c) The commissioner shall serve as chair of the board.
13016 (d) A vacancy occurring on the board for any cause of the members appointed under
13017 Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to
13018 this section for the unexpired term of the vacating member.
13019 (e) The governor may at any time remove a member appointed under Subsection
13020 (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for
13021 cause upon a hearing.
13022 (f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any
13023 other office in the government of the United States, this state or any other state, or of any
13024 county government or municipal corporation within a state.
13025 (g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or
13026 benefits for the member's service, but may receive per diem and travel expenses in accordance
13027 with:
13028 (i) Section 63A-3-106;
13029 (ii) Section 63A-3-107; and
13030 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
13031 63A-3-107.
13032 (2) A meeting of the board may be called:
13033 (a) by the chair; or
13034 (b) jointly by the members appointed under Subsection (1)(a)(ii).
13035 (3) The chair may provide staff and administrative support as necessary from the Labor
13036 Commission.
13037 (4) A vacancy in the board [~~shall not~~] does not impair the right of the remaining
13038 members to exercise all the powers of the board, and two members of the board shall at all
13039 times constitute a quorum.
13040 (5) The board shall have an official seal which shall be judicially noticed.
13041 Section 308. Section **34-20-5** is amended to read:
13042 **34-20-5. Labor relations board -- Offices -- Jurisdiction -- Member's**

13043 **participation in case.**
13044 The principal office of the board shall be at the state capitol, but it may meet and
13045 exercise any or all of its powers at any other place. The board may, by one or more of its
13046 members or by [~~such~~] the agents or agencies [~~as~~] it may designate, prosecute any inquiry
13047 necessary to its functions in any part of the state. A member who participates in [~~such~~] the
13048 inquiry [~~shall not~~] may not be disqualified from subsequently participating in a decision of the
13049 board in the same case.
13050 Section 309. Section **34-20-8** is amended to read:
13051 **34-20-8. Unfair labor practices.**
13052 (1) It shall be an unfair labor practice for an employer, individually or in concert with
13053 others:
13054 (a) To interfere with, restrain or coerce employees in the exercise of the rights
13055 guaranteed in Section 34-20-7.
13056 (b) To dominate or interfere with the formation or administration of any labor
13057 organization or contribute financial or other support to it; provided, that subject to rules and
13058 regulations made and published by the board pursuant to Section 34-20-6, an employer [~~shall~~
13059 ~~not be~~] is not prohibited from permitting employees to confer with [~~him~~] the employer during
13060 working hours without loss of time or pay.
13061 (c) By discrimination in regard to hire or tenure of employment or any term of
13062 condition of employment to encourage or discourage membership in any labor organization;
13063 provided, that nothing in this act shall preclude an employer from making an agreement with a
13064 labor organization (not established, maintained or assisted by any action defined in this act as
13065 an unfair labor practice) to require as a condition of employment, membership therein, if such
13066 labor organization is the representative of the employees as provided in Subsection 34-20-9(1)
13067 in the appropriate collective bargaining unit covered by such agreement when made.
13068 (d) To refuse to bargain collectively with the representative of a majority of [~~his~~] the
13069 employer's employees in any collective bargaining unit; provided, that, when two or more labor
13070 organizations claim to represent a majority of the employees in the bargaining unit, the
13071 employer shall be free to file with the board a petition for investigation of certification of
13072 representatives and during the pendency of [~~such~~] the proceedings the employer [~~shall not~~] may
13073 not be [~~deemed~~] considered to have refused to bargain.

13074 (e) To bargain collectively with the representatives of less than a majority of [~~his~~] the
13075 employer's employees in a collective bargaining unit.
13076 (f) To discharge or otherwise discriminate against an employee because [~~he~~] the
13077 employee has filed charges or given testimony under this [~~act~~] chapter.
13078 (2) It shall be an unfair labor practice for an employee individually or in concert with
13079 others:
13080 (a) To coerce or intimidate an employee in the enjoyment of [~~his~~] the employee's legal
13081 rights, including those guaranteed in Section 34-20-7, or to intimidate [~~his~~] the employee's
13082 family, picket [~~his~~] the employee's domicile, or injure the person or property of [~~such~~] the
13083 employee or [~~his~~] the employee's family.
13084 (b) To coerce, intimidate or induce an employer to interfere with any of [~~his~~] the
13085 employer's employees in the enjoyment of their legal rights, including those guaranteed in
13086 Section 34-20-7, or to engage in any practice with regard to [~~his~~] the employer's employees
13087 which would constitute an unfair labor practice if undertaken by [~~him on his~~] the employer on
13088 the employer's own initiative.
13089 (c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an
13090 exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant
13091 of a strike unless a majority in a collective bargaining unit of the employees of an employer
13092 against whom such acts are primarily directed have voted by secret ballot to call a strike.
13093 (d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of
13094 any kind the pursuit of any lawful work or employment, or to obstruct or interfere with
13095 entrance to or egress from any place of employment, or to obstruct or interfere with free and
13096 uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel
13097 or conveyance.
13098 (e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation,
13099 force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or
13100 services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of
13101 materials, equipment or services, provided, however, that nothing herein shall prevent
13102 sympathetic strikes in support of those in similar occupations working for other employers in
13103 the same craft.
13104 (f) To take unauthorized possession of property of the employer.

13105 (3) It shall be an unfair labor practice for any person to do or cause to be done on
13106 behalf of or in the interest of employers or employees, or in connection with or to influence the
13107 outcome of any controversy as to employment relations, any act prohibited by Subsections (1)
13108 and (2) of this section.
13109 Section 310. Section **34-23-208** is amended to read:
13110 **34-23-208. Exceptions.**
13111 The provisions of this chapter [~~shall not~~] do not apply to a person who is 16 years of
13112 age or older and for whom employment would not endanger [~~his~~] the person's health and safety
13113 if that person:
13114 (1) has received a high school diploma;
13115 (2) has received a school release certificate;
13116 (3) is legally married; or
13117 (4) is head of a household.
13118 Section 311. Section **34-25-2** is amended to read:
13119 **34-25-2. "Fellow servant" defined.**
13120 All persons who are engaged in the service of any employer and who while so engaged
13121 are in the same grade of service and are working together at the same time and place and to a
13122 common purpose, neither of such persons being entrusted by such employer with any
13123 superintendence or control over [~~his~~] the person's fellow employees, are fellow servants with
13124 each other; but nothing herein contained shall be so construed as to make the employees of
13125 such employer fellow servants with other employees engaged in any other department of
13126 service of such employer. Employees who do not come within the provisions of this section
13127 [~~shall not~~] may not be considered fellow servants.
13128 Section 312. Section **34-28-5** is amended to read:
13129 **34-28-5. Separation from payroll -- Resignation -- Cessation because of industrial**
13130 **dispute.**
13131 (1) (a) Whenever an employer separates an employee from the employer's payroll the
13132 unpaid wages of the employee become due immediately, and the employer shall pay the wages
13133 to the employee within 24 hours of the time of separation at the specified place of payment.
13134 (b) (i) In case of failure to pay wages due an employee within 24 hours of written
13135 demand, the wages of the employee shall continue from the date of demand until paid, but in

13136 no event to exceed 60 days, at the same rate that the employee received at the time of
13137 separation.
13138 (ii) The employee may recover the penalty thus accruing to the employee in a civil
13139 action. This action [~~must~~] shall be commenced within 60 days from the date of separation.
13140 (iii) An employee who has not made a written demand for payment is not entitled to
13141 any penalty under Subsection (1)(b).
13142 (2) If an employee does not have a written contract for a definite period and resigns
13143 the employee's employment, the wages earned and unpaid together with any deposit held by the
13144 employer and properly belonging to the resigned employee for the performance of the
13145 employee's employment duties become due and payable on the next regular payday.
13146 (3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at
13147 the time of this cessation become due and payable at the next regular payday, as provided in
13148 Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose
13149 work has been suspended as a result of the industrial dispute, together with any deposit or other
13150 guaranty held by the employer for the faithful performance of the duties of the employment.
13151 (4) This section does not apply to the earnings of a sales agent employed on a
13152 commission basis who has custody of accounts, money, or goods of the sales agent's principal
13153 if the net amount due the agent is determined only after an audit or verification of sales,
13154 accounts, funds, or stocks.
13155 Section 313. Section **34-28-6** is amended to read:
13156 **34-28-6. Dispute over wages -- Notice and payment.**
13157 (1) In case of a dispute over wages, the employer shall give written notice to the
13158 employee of the amount of wages [~~which he~~] that the employer concedes to be due and shall
13159 pay such amount without condition within the time set by this chapter[~~; but acceptance by the~~
13160 ~~employee of any such payment made shall not~~].
13161 (2) Acceptance by an employee of a payment described in Subsection (1) does not
13162 constitute a release as to the balance of [~~his~~] the employee's claim.
13163 Section 314. Section **34-28-14** is amended to read:
13164 **34-28-14. Actions by division as assignee -- Costs need not be advanced.**
13165 (1) In all actions brought by the division as assignee under Section 34-28-13, no court
13166 costs of any nature shall be required to be advanced nor shall any bond or other security be

13167 required from the division in connection with the same.
13168 (2) Any sheriff, constable, or other officer requested by the division to serve summons,
13169 writs, complaints, orders, including any garnishment papers, and all necessary and legal papers
13170 within his jurisdiction shall do so without requiring the division to advance the fees or furnish
13171 any security or bond.
13172 (3) Whenever the division shall require the sheriff, constable, or other officer whose
13173 duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage
13174 claim judgment to perform any such duty, this officer shall do so without requiring the division
13175 to furnish any security or bond in the action.
13176 (4) The officer in carrying out the provisions of this Subsection (4) [~~shall not be~~] is not
13177 responsible in damages for any wrongful seizure made in good faith.
13178 (5) Whenever anyone other than the defendant claims the right of possession or
13179 ownership to such seized property, then in such case the officer may permit such claimant to
13180 have the custody of such property pending a determination of the court as to who has right of
13181 possession or ownership of such property.
13182 (6) Any garnishee defendant shall be required to appear and make answer in any such
13183 action, as required by law, without having paid to [~~him~~] the garnishee defendant in advance
13184 witness fees, but such witness fees shall be included as part of the taxable costs of such action.
13185 Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the
13186 witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriff's or
13187 constable's fees; and fourth, the court costs.
13188 Section 315. Section **34-29-1** is amended to read:
13189 **34-29-1. License required -- Agencies for teachers excepted.**
13190 It shall be unlawful for any person to open and establish in any city or town, or
13191 elsewhere within the limits of this state, any intelligence or employment office for the purpose
13192 of procuring or obtaining for money or other valuable consideration, either directly or
13193 indirectly, any work or employment for persons seeking the same, or to otherwise engage in
13194 such business, or in any way to act as a broker or go-between between employers and persons
13195 seeking work, without first having obtained a license so to do from the city, town, or, if not
13196 within any city or town, from the county where such intelligence or employment office is to be
13197 opened or such business is to be carried on. Any person performing any of these services shall

13198 be deemed to be an employment agent within the meaning of this chapter, but the provisions of
13199 Section 34-29-10 [~~shall not~~] do not apply to any person operating agencies for schoolteachers;
13200 but it shall be a misdemeanor for any schoolteachers' employment agency to receive as
13201 commission for information or assistance such as is described herein any consideration in value
13202 in excess of 5% of the amount of the first year's salary of the person to whom such information
13203 is furnished.
13204 Section 316. Section **34-32-4** is amended to read:
13205 **34-32-4. Exceptions from chapter.**
13206 (1) The provisions of this chapter [~~shall not~~] do not apply to carriers as that term is
13207 defined in the Railway Labor Act passed by the Congress of the United States, June 21, 1934.
13208 48 Stat. 1189, U.S. Code, Title 45, Section 151.
13209 (2) Nothing in this chapter is intended to, or may be construed to, preempt any
13210 requirement of federal law.
13211 Section 317. Section **34-34-2** is amended to read:
13212 **34-34-2. Public policy.**
13213 It is hereby declared to be the public policy of the state [~~of Utah~~] that the right of
13214 persons to work, whether in private employment or for the state, its counties, cities, school
13215 districts, or other political subdivisions, [~~shall not~~] may not be denied or abridged on account
13216 of membership or nonmembership in any labor union, labor organization or any other type of
13217 association; and further, that the right to live includes the right to work. The exercise of the
13218 right to work [~~must~~] shall be protected and maintained free from undue restraints and coercion.
13219 Section 318. Section **34-34-15** is amended to read:
13220 **34-34-15. Existing contracts -- Chapter applicable upon renewal or extension.**
13221 The provisions of this chapter [~~shall not~~] do not apply to any lawful contract in force on
13222 the effective date of this act, but they shall apply in all respects to contracts entered into after
13223 such date and to any renewal or extension of any existing contract.
13224 Section 319. Section **34-36-3** is amended to read:
13225 **34-36-3. Carriers and vehicles of United States exempt.**
13226 This chapter [~~shall not~~] does not apply to motor carriers or to motor vehicles owned and
13227 operated by the United States.
13228 Section 320. Section **34-41-106** is amended to read:

13229 **34-41-106. Employee not disabled.**
13230 An employee, volunteer, prospective employee, or prospective volunteer whose drug
13231 test results are verified or confirmed as positive in accordance with the provisions of this
13232 chapter [~~shall not~~] may not, by virtue of those results alone, be defined as disabled for purposes
13233 of:
13234 (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
13235 (2) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.
13236 Section 321. Section **34A-1-408** is amended to read:
13237 **34A-1-408. Investigations through representatives.**
13238 (1) For the purpose of making any investigation necessary for the implementation of
13239 this title with regard to any employment or place of employment, the commission may appoint,
13240 in writing, any competent person who is a resident of the state, as an agent, whose duties shall
13241 be prescribed in the written appointment.
13242 (2) In the discharge of the agent's duties, the agent shall have:
13243 (a) every power of investigation granted in this title to the commission; and
13244 (b) the same powers as a referee appointed by a district court with regard to taking
13245 evidence.
13246 (3) The commission may:
13247 (a) conduct any number of the investigations contemporaneously through different
13248 agents; and
13249 (b) delegate to the agents the taking of evidence bearing upon any investigation or
13250 hearing.
13251 (4) The recommendations made by the agents shall be advisory only and [~~shall not~~] do
13252 not preclude the taking of further evidence or further investigation if the commission so orders.
13253 Section 322. Section **34A-1-409** is amended to read:
13254 **34A-1-409. Partial invalidity -- Saving clause.**
13255 Should any section or provision of this title be decided by the courts to be
13256 unconstitutional or invalid the same [~~shall not~~] does not affect the validity of the title as a
13257 whole or any part of the title other than the part so decided to be unconstitutional.
13258 Section 323. Section **34A-2-413** is amended to read:
13259 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

13260 (1) (a) In the case of a permanent total disability resulting from an industrial accident
13261 or occupational disease, the employee shall receive compensation as outlined in this section.
13262 (b) To establish entitlement to permanent total disability compensation, the employee
13263 [~~must~~] shall prove by a preponderance of evidence that:
13264 (i) the employee sustained a significant impairment or combination of impairments as a
13265 result of the industrial accident or occupational disease that gives rise to the permanent total
13266 disability entitlement;
13267 (ii) the employee is permanently totally disabled; and
13268 (iii) the industrial accident or occupational disease is the direct cause of the employee's
13269 permanent total disability.
13270 (c) To establish that an employee is permanently totally disabled the employee [~~must~~]
13271 shall prove by a preponderance of the evidence that:
13272 (i) the employee is not gainfully employed;
13273 (ii) the employee has an impairment or combination of impairments that limit the
13274 employee's ability to do basic work activities;
13275 (iii) the industrial or occupationally caused impairment or combination of impairments
13276 prevent the employee from performing the essential functions of the work activities for which
13277 the employee has been qualified until the time of the industrial accident or occupational disease
13278 that is the basis for the employee's permanent total disability claim; and
13279 (iv) the employee cannot perform other work reasonably available, taking into
13280 consideration the employee's:
13281 (A) age;
13282 (B) education;
13283 (C) past work experience;
13284 (D) medical capacity; and
13285 (E) residual functional capacity.
13286 (d) Evidence of an employee's entitlement to disability benefits other than those
13287 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:
13288 (i) may be presented to the commission;
13289 (ii) is not binding; and
13290 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah

13291 Occupational Disease Act.
13292 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot
13293 perform other work reasonably available, the following may not be considered:
13294 (i) whether the employee is incarcerated in a facility operated by or contracting with a
13295 federal, state, county, or municipal government to house a criminal offender in either a secure
13296 or nonsecure setting; or
13297 (ii) whether the employee is not legally eligible to be employed because of a reason
13298 unrelated to the impairment or combination of impairments.
13299 (2) For permanent total disability compensation during the initial 312-week
13300 entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the
13301 injury, limited as follows:
13302 (a) compensation per week may not be more than 85% of the state average weekly
13303 wage at the time of the injury;
13304 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
13305 sum of $45 per week and:
13306 (A) $5 for a dependent spouse; and
13307 (B) $5 for each dependent child under the age of 18 years, up to a maximum of four
13308 dependent minor children; and
13309 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:
13310 (A) the maximum established in Subsection (2)(a); or
13311 (B) the average weekly wage of the employee at the time of the injury; and
13312 (c) after the initial 312 weeks, the minimum weekly compensation rate under
13313 Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest
13314 dollar.
13315 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
13316 out of and in the course of the employee's employment on or before June 30, 1994.
13317 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
13318 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date
13319 of injury.
13320 (b) The employer or its insurance carrier may not be required to pay compensation for
13321 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410

13322 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
13323 payable over the initial 312 weeks at the applicable permanent total disability compensation
13324 rate under Subsection (2).
13325 (c) The Employers' Reinsurance Fund shall for an overpayment of compensation
13326 described in Subsection (3)(b), reimburse the overpayment:
13327 (i) to the employer or its insurance carrier; and
13328 (ii) out of the Employers' Reinsurance Fund's liability to the employee.
13329 (d) After an employee receives compensation from the employee's employer, its
13330 insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities
13331 amounting to 312 weeks of compensation at the applicable permanent total disability
13332 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total
13333 disability compensation.
13334 (e) Employers' Reinsurance Fund payments shall commence immediately after the
13335 employer or its insurance carrier satisfies its liability under this Subsection (3) or Section
13336 34A-2-703.
13337 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
13338 out of and in the course of the employee's employment on or after July 1, 1994.
13339 (a) The employer or its insurance carrier is liable for permanent total disability
13340 compensation.
13341 (b) The employer or its insurance carrier may not be required to pay compensation for
13342 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
13343 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
13344 payable over the initial 312 weeks at the applicable permanent total disability compensation
13345 rate under Subsection (2).
13346 (c) The employer or its insurance carrier may recoup the overpayment of compensation
13347 described in Subsection (4) by reasonably offsetting the overpayment against future liability
13348 paid before or after the initial 312 weeks.
13349 (5) (a) A finding by the commission of permanent total disability is not final, unless
13350 otherwise agreed to by the parties, until:
13351 (i) an administrative law judge reviews a summary of reemployment activities
13352 undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;

13353 (ii) the employer or its insurance carrier submits to the administrative law judge:
13354 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
13355 designed to return the employee to gainful employment; or
13356 (B) notice that the employer or its insurance carrier will not submit a plan; and
13357 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
13358 otherwise stipulated, to:
13359 (A) consider evidence regarding rehabilitation; and
13360 (B) review any reemployment plan submitted by the employer or its insurance carrier
13361 under Subsection (5)(a)(ii).
13362 (b) Before commencing the procedure required by Subsection (5)(a), the administrative
13363 law judge shall order:
13364 (i) the initiation of permanent total disability compensation payments to provide for the
13365 employee's subsistence; and
13366 (ii) the payment of any undisputed disability or medical benefits due the employee.
13367 (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in
13368 Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.
13369 (d) The employer or its insurance carrier shall be given credit for any disability
13370 payments made under Subsection (5)(b) against its ultimate disability compensation liability
13371 under this chapter or Chapter 3, Utah Occupational Disease Act.
13372 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
13373 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to
13374 Subsections (5)(e)(i) through (iii).
13375 (i) The plan may include, but not require an employee to pay for:
13376 (A) retraining;
13377 (B) education;
13378 (C) medical and disability compensation benefits;
13379 (D) job placement services; or
13380 (E) incentives calculated to facilitate reemployment.
13381 (ii) The plan shall include payment of reasonable disability compensation to provide
13382 for the employee's subsistence during the rehabilitation process.
13383 (iii) The employer or its insurance carrier shall diligently pursue the reemployment

13384 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan
13385 is cause for the administrative law judge on the administrative law judge's own motion to make
13386 a final decision of permanent total disability.
13387 (f) If a preponderance of the evidence shows that successful rehabilitation is not
13388 possible, the administrative law judge shall order that the employee be paid weekly permanent
13389 total disability compensation benefits.
13390 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as
13391 prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an
13392 employee could immediately or without unreasonable delay return to work but for the
13393 following, an administrative law judge shall order that the employee be denied the payment of
13394 weekly permanent total disability compensation benefits:
13395 (i) incarceration in a facility operated by or contracting with a federal, state, county, or
13396 municipal government to house a criminal offender in either a secure or nonsecure setting; or
13397 (ii) not being legally eligible to be employed because of a reason unrelated to the
13398 impairment or combination of impairments.
13399 (6) (a) The period of benefits commences on the date the employee became
13400 permanently totally disabled, as determined by a final order of the commission based on the
13401 facts and evidence, and ends:
13402 (i) with the death of the employee; or
13403 (ii) when the employee is capable of returning to regular, steady work.
13404 (b) An employer or its insurance carrier may provide or locate for a permanently totally
13405 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
13406 minimum wage, except that the employee may not be required to accept the work to the extent
13407 that it would disqualify the employee from Social Security disability benefits.
13408 (c) An employee shall:
13409 (i) fully cooperate in the placement and employment process; and
13410 (ii) accept the reasonable, medically appropriate, part-time work.
13411 (d) In a consecutive four-week period when an employee's gross income from the work
13412 provided under Subsection (6)(b) exceeds $500, the employer or insurance carrier may reduce
13413 the employee's permanent total disability compensation by 50% of the employee's income in
13414 excess of $500.

13415 (e) If a work opportunity is not provided by the employer or its insurance carrier, a
13416 permanently totally disabled employee may obtain medically appropriate, part-time work
13417 subject to the offset provisions of Subsection (6)(d).
13418 (f) (i) The commission shall establish rules regarding the part-time work and offset.
13419 (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part
13420 8, Adjudication.
13421 (g) The employer or its insurance carrier has the burden of proof to show that
13422 medically appropriate part-time work is available.
13423 (h) The administrative law judge may:
13424 (i) excuse an employee from participation in any work:
13425 (A) that would require the employee to undertake work exceeding the employee's:
13426 (I) medical capacity; or
13427 (II) residual functional capacity; or
13428 (B) for good cause; or
13429 (ii) allow the employer or its insurance carrier to reduce permanent total disability
13430 benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time
13431 work is offered, but the employee fails to fully cooperate.
13432 (7) When an employee is rehabilitated or the employee's rehabilitation is possible but
13433 the employee has some loss of bodily function, the award shall be for permanent partial
13434 disability.
13435 (8) As determined by an administrative law judge, an employee is not entitled to
13436 disability compensation, unless the employee fully cooperates with any evaluation or
13437 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
13438 administrative law judge shall dismiss without prejudice the claim for benefits of an employee
13439 if the administrative law judge finds that the employee fails to fully cooperate, unless the
13440 administrative law judge states specific findings on the record justifying dismissal with
13441 prejudice.
13442 (9) (a) The loss or permanent and complete loss of the use of the following constitutes
13443 total and permanent disability that is compensated according to this section:
13444 (i) both hands;
13445 (ii) both arms;

13446 (iii) both feet;
13447 (iv) both legs;
13448 (v) both eyes; or
13449 (vi) any combination of two body members described in this Subsection (9)(a).
13450 (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.
13451 (10) (a) An insurer or self-insured employer may periodically reexamine a permanent
13452 total disability claim, except those based on Subsection (9), for which the insurer or
13453 self-insured employer had or has payment responsibility to determine whether the employee
13454 remains permanently totally disabled.
13455 (b) Reexamination may be conducted no more than once every three years after an
13456 award is final, unless good cause is shown by the employer or its insurance carrier to allow
13457 more frequent reexaminations.
13458 (c) The reexamination may include:
13459 (i) the review of medical records;
13460 (ii) employee submission to one or more reasonable medical evaluations;
13461 (iii) employee submission to one or more reasonable rehabilitation evaluations and
13462 retraining efforts;
13463 (iv) employee disclosure of Federal Income Tax Returns;
13464 (v) employee certification of compliance with Section 34A-2-110; and
13465 (vi) employee completion of one or more sworn affidavits or questionnaires approved
13466 by the division.
13467 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
13468 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
13469 diem as well as reasonable expert witness fees incurred by the employee in supporting the
13470 employee's claim for permanent total disability benefits at the time of reexamination.
13471 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
13472 permanent total disability finding, an administrative law judge may order the suspension of the
13473 employee's permanent total disability benefits until the employee cooperates with the
13474 reexamination.
13475 (f) (i) If the reexamination of a permanent total disability finding reveals evidence that
13476 reasonably raises the issue of an employee's continued entitlement to permanent total disability

13477 compensation benefits, an insurer or self-insured employer may petition the Division of
13478 Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include
13479 with the petition, documentation supporting the insurer's or self-insured employer's belief that
13480 the employee is no longer permanently totally disabled.
13481 (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined
13482 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
13483 hearing.
13484 (iii) Evidence of an employee's participation in medically appropriate, part-time work
13485 may not be the sole basis for termination of an employee's permanent total disability
13486 entitlement, but the evidence of the employee's participation in medically appropriate, part-time
13487 work under Subsection (6) may be considered in the reexamination or hearing with other
13488 evidence relating to the employee's status and condition.
13489 (g) In accordance with Section 34A-1-309, the administrative law judge may award
13490 reasonable attorney fees to an attorney retained by an employee to represent the employee's
13491 interests with respect to reexamination of the permanent total disability finding, except if the
13492 employee does not prevail, the attorney fees shall be set at $1,000. The attorney fees awarded
13493 shall be paid by the employer or its insurance carrier in addition to the permanent total
13494 disability compensation benefits due.
13495 (h) During the period of reexamination or adjudication, if the employee fully
13496 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
13497 continue to pay the permanent total disability compensation benefits due the employee.
13498 (11) If any provision of this section, or the application of any provision to any person
13499 or circumstance, is held invalid, the remainder of this section is given effect without the invalid
13500 provision or application.
13501 Section 324. Section **34A-2-802** is amended to read:
13502 **34A-2-802. Rules of evidence and procedure before commission -- Admissible**
13503 **evidence.**
13504 (1) The commission, the commissioner, an administrative law judge, or the Appeals
13505 Board, is not bound by the usual common law or statutory rules of evidence, or by any
13506 technical or formal rules or procedure, other than as provided in this section or as adopted by
13507 the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The

13508 commission may make its investigation in such manner as in its judgment is best calculated to
13509 ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.
13510 (2) The commission may receive as evidence and use as proof of any fact in dispute all
13511 evidence [~~deemed~~] considered material and relevant including[~~, but not limited to~~] the
13512 following:
13513 (a) depositions and sworn testimony presented in open hearings;
13514 (b) reports of attending or examining physicians, or of pathologists;
13515 (c) reports of investigators appointed by the commission;
13516 (d) reports of employers, including copies of time sheets, book accounts, or other
13517 records; or
13518 (e) hospital records in the case of an injured or diseased employee.
13519 Section 325. Section **34A-3-104** is amended to read:
13520 **34A-3-104. Employer liability for compensation.**
13521 (1) Every employer is liable for the payment of disability and medical benefits to every
13522 employee who becomes disabled, or death benefits to the dependents of any employee who
13523 dies, by reason of an occupational disease under the terms of this chapter.
13524 (2) Compensation [~~shall not~~] may not be paid when the last day of injurious exposure
13525 of the employee to the hazards of the occupational disease occurred prior to 1941.
13526 Section 326. Section **34A-6-108** is amended to read:
13527 **34A-6-108. Collection, compilation, and analysis of statistics.**
13528 (1) The division shall develop and maintain an effective program of collection,
13529 compilation, and analysis of occupational safety and health statistics. The program may cover
13530 all employments whether subject to this chapter but [~~shall not~~] may not cover employments
13531 excluded by Subsection 34A-6-104(2). The division shall compile accurate statistics on work
13532 injuries and occupational diseases.
13533 (2) The division may use the functions imposed by Subsection (1) to:
13534 (a) promote, encourage, or directly engage in programs of studies, information, and
13535 communication concerning occupational safety and health statistics;
13536 (b) assist agencies or political subdivisions in developing and administering programs
13537 dealing with occupational safety and health statistics; and
13538 (c) arrange, through assistance, for the conduct of research and investigations which

13539 give promise of furthering the objectives of this section.
13540 (3) The division may, with the consent of any state agency or political subdivision of
13541 the state, accept and use the services, facilities, and employees of state agencies or political
13542 subdivisions of the state, with or without reimbursement, to assist it in carrying out its
13543 functions under this section.
13544 (4) On the basis of the records made and kept under Subsection 34A-6-301(3),
13545 employers shall file reports with the division in the form and manner prescribed by the
13546 division.
13547 (5) Agreements between the United States Department of Labor and Utah pertaining to
13548 the collection of occupational safety and health statistics already in effect on July 1, 1973,
13549 remain in effect until superseded.
13550 Section 327. Section **34A-6-202** is amended to read:
13551 **34A-6-202. Standards -- Procedure for issuance, modification, or revocation by**
13552 **division -- Emergency temporary standard -- Variances from standards -- Statement of**
13553 **reasons for administrator's actions -- Judicial review -- Priority for establishing**
13554 **standards.**
13555 (1) (a) The division, as soon as practicable, shall issue as standards any national
13556 consensus standard, any adopted federal standard, or any adopted Utah standard, unless it
13557 determines that issuance of the standard would not result in improved safety or health.
13558 (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30
13559 days after publication unless otherwise specified.
13560 (c) If any conflict exists between standards, the division shall issue the standard that
13561 assures the greatest protection of safety or health for affected employees.
13562 (2) The division may issue, modify, or revoke any standard as follows:
13563 (a) (i) Whenever the administrator determines upon the basis of information submitted
13564 in writing by an interested person, a representative of any organization of employers or
13565 employees, a nationally recognized standards-producing organization, the Department of
13566 Health, or a state agency or political subdivision, or on information developed by the division
13567 or otherwise available, that a rule should be promulgated to promote the objectives of this
13568 chapter, the administrator may request recommendations from the advisory council.
13569 (ii) The administrator shall provide the advisory council with proposals, together with

13570 all pertinent factual information developed by the division, or otherwise available, including
13571 the results of research, demonstrations, and experiments.
13572 (iii) The advisory council shall submit to the administrator its recommendations
13573 regarding the rule to be promulgated within a period as prescribed by the administrator.
13574 (b) The division shall publish a proposed rule issuing, modifying, or revoking an
13575 occupational safety or health standard and shall afford interested parties an opportunity to
13576 submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative
13577 Rulemaking Act. When the administrator determines that a rule should be issued, the division
13578 shall publish the proposed rule after the submission of the advisory council's recommendations
13579 or the expiration of the period prescribed by the administrator for submission.
13580 (c) The administrator, in issuing standards for toxic materials or harmful physical
13581 agents under this subsection, shall set the standard which most adequately assures, to the extent
13582 feasible, on the basis of the best available evidence, that no employee will suffer material
13583 impairment of health or functional capacity even if the employee has regular exposure to the
13584 hazard during an employee's working life. Development of standards under this subsection
13585 shall be based upon research, demonstrations, experiments, and other information deemed
13586 appropriate. In addition to the attainment of the highest degree of health and safety protection
13587 for the employee, other considerations shall be the latest available scientific data in the field,
13588 the feasibility of the standards, and experience under this and other health and safety laws.
13589 Whenever practicable, the standard shall be expressed in terms of objective criteria and of the
13590 performance desired.
13591 (d) (i) Any employer may apply to the administrator for a temporary order granting a
13592 variance from a standard issued under this section. Temporary orders shall be granted only if
13593 the employer:
13594 (A) files an application which meets the requirements of Subsection (2)(d)(iv);
13595 (B) establishes that the employer is unable to comply with a standard by its effective
13596 date because of unavailability of professional or technical personnel or of materials and
13597 equipment needed for compliance with the standard or because necessary construction or
13598 alteration of facilities cannot be completed by the effective date;
13599 (C) establishes that the employer is taking all available steps to safeguard the
13600 employer's employees against hazards; and

13601 (D) establishes that the employer has an effective program for compliance as quickly as
13602 practicable.
13603 (ii) Any temporary order shall prescribe the practices, means, methods, operations, and
13604 processes which the employer [~~must~~] shall adopt and use while the order is in effect and state
13605 in detail the employer's program for compliance with the standard. A temporary order may be
13606 granted only after notice to employees and an opportunity for a public hearing; provided, that
13607 the administrator may issue one interim order effective until a decision is made after public
13608 hearing.
13609 (iii) A temporary order may not be in effect longer than the period reasonably required
13610 by the employer to achieve compliance. In no case shall the period of a temporary order
13611 exceed one year.
13612 (iv) An application for a temporary order under Subsection (2)(d) shall contain:
13613 (A) a specification of the standard or part from which the employer seeks a variance;
13614 (B) a representation by the employer, supported by representations from qualified
13615 persons having first-hand knowledge of the facts represented, that the employer is unable to
13616 comply with the standard or some part of the standard;
13617 (C) a detailed statement of the reasons the employer is unable to comply;
13618 (D) a statement of the measures taken and anticipated with specific dates, to protect
13619 employees against the hazard;
13620 (E) a statement of when the employer expects to comply with the standard and what
13621 measures the employer has taken and those anticipated, giving specific dates for compliance;
13622 and
13623 (F) a certification that the employer has informed the employer's employees of the
13624 application by:
13625 (I) giving a copy to their authorized representative;
13626 (II) posting a statement giving a summary of the application and specifying where a
13627 copy may be examined at the place or places where notices to employees are normally posted;
13628 and
13629 (III) by other appropriate means.
13630 (v) The certification required under Subsection (2)(d)(iv) shall contain a description of
13631 how employees have been informed.

13632 (vi) The information to employees required under Subsection (2)(d)(v) shall inform the
13633 employees of their right to petition the division for a hearing.
13634 (vii) The administrator is authorized to grant a variance from any standard or some part
13635 of the standard when the administrator determines that it is necessary to permit an employer to
13636 participate in a research and development project approved by the administrator to demonstrate
13637 or validate new and improved techniques to safeguard the health or safety of workers.
13638 (e) (i) Any standard issued under this subsection shall prescribe the use of labels or
13639 other forms of warning necessary to ensure that employees are apprised of all hazards, relevant
13640 symptoms and emergency treatment, and proper conditions and precautions of safe use or
13641 exposure. When appropriate, a standard shall prescribe suitable protective equipment and
13642 control or technological procedures for use in connection with such hazards and provide for
13643 monitoring or measuring employee exposure at such locations and intervals, and in a manner
13644 necessary for the protection of employees. In addition, any such standard shall prescribe the
13645 type and frequency of medical examinations or other tests which shall be made available by the
13646 employer, or at the employer's cost, to employees exposed to hazards in order to most
13647 effectively determine whether the health of employees is adversely affected by exposure. If
13648 medical examinations are in the nature of research as determined by the division, the
13649 examinations may be furnished at division expense. The results of such examinations or tests
13650 shall be furnished only to the division; and, at the request of the employee, to the employee's
13651 physician.
13652 (ii) The administrator may by rule make appropriate modifications in requirements for
13653 the use of labels or other forms of warning, monitoring or measuring, and medical
13654 examinations warranted by experience, information, or medical or technological developments
13655 acquired subsequent to the promulgation of the relevant standard.
13656 (f) Whenever a rule issued by the administrator differs substantially from an existing
13657 national consensus standard, the division shall publish a statement of the reasons why the rule
13658 as adopted will better effectuate the purposes of this chapter than the national consensus
13659 standard.
13660 (g) Whenever a rule, standard, or national consensus standard is modified by the
13661 secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and
13662 Health Act of 1970, the less restrictive modification shall be immediately applicable to this

13663 chapter and shall be immediately implemented by the division.
13664 (3) (a) The administrator shall provide an emergency temporary standard to take
13665 immediate effect upon publication if the administrator determines that:
13666 (i) employees are exposed to grave danger from exposure to substances or agents
13667 determined to be toxic or physically harmful or from new hazards; and
13668 (ii) that the standard is necessary to protect employees from danger.
13669 (b) An emergency standard shall be effective until superseded by a standard issued in
13670 accordance with the procedures prescribed in Subsection (3)(c).
13671 (c) Upon publication of an emergency standard the division shall commence a
13672 proceeding in accordance with Subsection (2) and the standard as published shall serve as a
13673 proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no
13674 later than 120 days after publication of the emergency standard.
13675 (4) (a) Any affected employer may apply to the division for a rule or order for a
13676 variance from a standard issued under this section. Affected employees shall be given notice of
13677 each application and may participate in a hearing. The administrator shall issue a rule or order
13678 if the administrator determines on the record, after opportunity for an inspection where
13679 appropriate and a hearing, that the proponent of the variance has demonstrated by a
13680 preponderance of the evidence that the conditions, practices, means, methods, operations, or
13681 processes used or proposed to be used by an employer will provide employment and a
13682 workplace to the employer's employees that are as safe and healthful as those which would
13683 prevail if the employer complied with the standard.
13684 (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the
13685 employer must maintain, and the practices, means, methods, operations and processes that the
13686 employer must adopt and use to the extent they differ from the standard in question.
13687 (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon
13688 application by an employer, employees, or by the administrator on its own motion, in the
13689 manner prescribed for its issuance under Subsection (4) at any time after six months from its
13690 issuance.
13691 (5) The administrator shall include a statement of reasons for the administrator's actions
13692 when the administrator:
13693 (a) issues any code, standard, rule, or order;

13694 (b) grants any exemption or extension of time; or
13695 (c) compromises, mitigates, or settles any penalty assessed under this chapter.
13696 (6) Any person adversely affected by a standard issued under this section, at any time
13697 prior to 60 days after a standard is issued, may file a petition challenging its validity with the
13698 district court having jurisdiction for judicial review. A copy of the petition shall be served
13699 upon the division by the petitioner. The filing of a petition [~~shall not~~] may not, unless
13700 otherwise ordered by the court, operate as a stay of the standard. The determinations of the
13701 division shall be conclusive if supported by substantial evidence on the record as a whole.
13702 (7) In determining the priority for establishing standards under this section, the division
13703 shall give due regard to the urgency of the need for mandatory safety and health standards for
13704 particular industries, trades, crafts, occupations, businesses, workplaces or work environments.
13705 The administrator shall also give due regard to the recommendations of the Department of
13706 Health about the need for mandatory standards in determining the priority for establishing the
13707 standards.
13708 Section 328. Section **34A-6-301** is amended to read:
13709 **34A-6-301. Inspection and investigation of workplace, worker injury, illness, or**
13710 **complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers --**
13711 **Employer and employee representatives -- Request for inspection -- Compilation and**
13712 **publication of reports and information -- Rules.**
13713 (1) (a) The division or its representatives, upon presenting appropriate credentials to
13714 the owner, operator, or agent in charge, may:
13715 (i) enter without delay at reasonable times any workplace where work is performed by
13716 an employee of an employer;
13717 (ii) inspect and investigate during regular working hours and at other reasonable times
13718 in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and
13719 all pertinent methods, operations, processes, conditions, structures, machines, apparatus,
13720 devices, equipment, and materials in the workplace; and
13721 (iii) question privately any such employer, owner, operator, agent, or employee.
13722 (b) The division, upon an employer's refusal to permit an inspection, may seek a
13723 warrant pursuant to the Utah Rules of Criminal Procedure.
13724 (2) (a) The division or its representatives may require the attendance and testimony of

13725 witnesses and the production of evidence under oath.
13726 (b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.
13727 (c) (i) If any person fails or refuses to obey an order of the division to appear, any
13728 district court within the jurisdiction of which such person is found, or resides or transacts
13729 business, upon the application by the division, shall have jurisdiction to issue to any person an
13730 order requiring that person to:
13731 (A) appear to produce evidence if, as, and when so ordered; and
13732 (B) give testimony relating to the matter under investigation or in question.
13733 (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be
13734 punished by the court as a contempt.
13735 (3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13736 Administrative Rulemaking Act, requiring employers:
13737 (i) to keep records regarding activities related to this chapter considered necessary for
13738 enforcement or for the development of information about the causes and prevention of
13739 occupational accidents and diseases; and
13740 (ii) through posting of notices or other means, to inform employees of their rights and
13741 obligations under this chapter including applicable standards.
13742 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13743 Administrative Rulemaking Act, requiring employers to keep records regarding any
13744 work-related death and injury and any occupational disease as provided in this Subsection
13745 (3)(b).
13746 (i) Each employer shall investigate or cause to be investigated all work-related injuries
13747 and occupational diseases and any sudden or unusual occurrence or change of conditions that
13748 pose an unsafe or unhealthful exposure to employees.
13749 (ii) Each employer shall, within eight hours of occurrence, notify the division of any:
13750 (A) work-related fatality;
13751 (B) disabling, serious, or significant injury; or
13752 (C) occupational disease incident.
13753 (iii) (A) Each employer shall file a report with the Division of Industrial Accidents
13754 within seven days after the occurrence of an injury or occupational disease, after the employer's
13755 first knowledge of the occurrence, or after the employee's notification of the same, in the form

13756 prescribed by the Division of Industrial Accidents, of any work-related fatality or any
13757 work-related injury or occupational disease resulting in:
13758 (I) medical treatment;
13759 (II) loss of consciousness;
13760 (III) loss of work;
13761 (IV) restriction of work; or
13762 (V) transfer to another job.
13763 (B) (I) Each employer shall file a subsequent report with the Division of Industrial
13764 Accidents of any previously reported injury or occupational disease that later resulted in death.
13765 (II) The subsequent report shall be filed with the Division of Industrial Accidents
13766 within seven days following the death or the employer's first knowledge or notification of the
13767 death.
13768 (iv) A report is not required for minor injuries, such as cuts or scratches that require
13769 first-aid treatment only, unless a treating physician files, or is required to file, the Physician's
13770 Initial Report of Work Injury or Occupational Disease with the Division of Industrial
13771 Accidents.
13772 (v) A report is not required:
13773 (A) for occupational diseases that manifest after the employee is no longer employed
13774 by the employer with which the exposure occurred; or
13775 (B) where the employer is not aware of an exposure occasioned by the employment
13776 which results in a compensable occupational disease as defined by Section 34A-3-103.
13777 (vi) Each employer shall provide the employee with:
13778 (A) a copy of the report submitted to the Division of Industrial Accidents; and
13779 (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's
13780 rights and responsibilities related to the industrial injury or occupational disease.
13781 (vii) Each employer shall maintain a record in a manner prescribed by the commission
13782 of all work-related fatalities or work-related injuries and of all occupational diseases resulting
13783 in:
13784 (A) medical treatment;
13785 (B) loss of consciousness;
13786 (C) loss of work;

13787 (D) restriction of work; or
13788 (E) transfer to another job.
13789 (viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13790 Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally
13791 recognized rules or standards on the reporting and recording of work-related injuries and
13792 occupational diseases.
13793 (c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13794 Administrative Rulemaking Act, requiring employers to keep records regarding exposures to
13795 potentially toxic materials or harmful physical agents required to be measured or monitored
13796 under Section 34A-6-202.
13797 (ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their
13798 representatives:
13799 (I) to observe the measuring or monitoring; and
13800 (II) to have access to the records of the measuring or monitoring, and to records that
13801 indicate their exposure to toxic materials or harmful agents.
13802 (B) Each employer shall promptly notify employees being exposed to toxic materials or
13803 harmful agents in concentrations that exceed prescribed levels and inform any such employee
13804 of the corrective action being taken.
13805 (4) Information obtained by the division shall be obtained with a minimum burden
13806 upon employers, especially those operating small businesses.
13807 (5) A representative of the employer and a representative authorized by employees
13808 shall be given an opportunity to accompany the division's authorized representative during the
13809 physical inspection of any workplace. If there is no authorized employee representative, the
13810 division's authorized representative shall consult with a reasonable number of employees
13811 concerning matters of health and safety in the workplace.
13812 (6) (a) (i) (A) Any employee or representative of employees who believes that a
13813 violation of an adopted safety or health standard exists that threatens physical harm, or that an
13814 imminent danger exists, may request an inspection by giving notice to the division's authorized
13815 representative of the violation or danger. The notice shall be:
13816 (I) in writing, setting forth with reasonable particularity the grounds for notice; and
13817 (II) signed by the employee or representative of employees.

13818 (B) A copy of the notice shall be provided the employer or the employer's agent no
13819 later than at the time of inspection.
13820 (C) Upon request of the person giving notice, the person's name and the names of
13821 individual employees referred to in the notice [~~shall not~~] may not appear in the copy or on any
13822 record published, released, or made available pursuant to Subsection (7).
13823 (ii) (A) If upon receipt of the notice the division's authorized representative determines
13824 there are reasonable grounds to believe that a violation or danger exists, the authorized
13825 representative shall make a special inspection in accordance with this section as soon as
13826 practicable to determine if a violation or danger exists.
13827 (B) If the division's authorized representative determines there are no reasonable
13828 grounds to believe that a violation or danger exists, the authorized representative shall notify
13829 the employee or representative of the employees in writing of that determination.
13830 (b) (i) Prior to or during any inspection of a workplace, any employee or representative
13831 of employees employed in the workplace may notify the division or its representative of any
13832 violation of a standard that they have reason to believe exists in the workplace.
13833 (ii) The division shall:
13834 (A) by rule, establish procedures for informal review of any refusal by a representative
13835 of the division to issue a citation with respect to any alleged violation; and
13836 (B) furnish the employees or representative of employees requesting review a written
13837 statement of the reasons for the division's final disposition of the case.
13838 (7) (a) The division may compile, analyze, and publish, either in summary or detailed
13839 form, all reports or information obtained under this section, subject to the limitations set forth
13840 in Section 34A-6-306.
13841 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13842 Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter,
13843 including rules for information obtained under this section, subject to the limitations set forth
13844 in Section 34A-6-306.
13845 (8) Any employer who refuses or neglects to make reports, to maintain records, or to
13846 file reports with the commission as required by this section is guilty of a class C misdemeanor
13847 and subject to citation under Section 34A-6-302 and a civil assessment as provided under
13848 Section 34A-6-307, unless the commission finds that the employer has shown good cause for

13849 submitting a report later than required by this section.
13850 Section 329. Section **34A-7-102** is amended to read:
13851 **34A-7-102. Standards for construction and design -- Special approved designs --**
13852 **Maintenance requirements.**
13853 (1) For the purposes of this part, the standards for the design and construction of a new
13854 boiler and new pressure vessel shall be the latest applicable provisions of the Boiler and
13855 Pressure Vessel Code published by the American Society of Mechanical Engineers.
13856 (2) This part [~~shall not~~] may not be construed as preventing the construction and use of
13857 a boiler or pressure vessel of special design:
13858 (a) subject to approval of the Division of Boiler and Elevator Safety; and
13859 (b) if the special design provides a level of safety equivalent to that contemplated by
13860 the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.
13861 (3) A boiler and pressure vessel, including an existing boiler and pressure vessel, shall
13862 be maintained in safe operating condition for the service involved.
13863 Section 330. Section **35A-3-106** is amended to read:
13864 **35A-3-106. Residency requirements.**
13865 To be eligible for public assistance under this chapter, an applicant [~~must~~] shall be
13866 living in Utah voluntarily with the intention of making this state the applicant's place of
13867 residence, and not for a temporary purpose.
13868 Section 331. Section **35A-3-108** is amended to read:
13869 **35A-3-108. Assignment of support.**
13870 (1) (a) The division shall obtain an assignment of support from each applicant or client
13871 regardless of whether the payment is court ordered.
13872 (b) Upon the receipt of assistance, any right to receive support from another person
13873 passes to the state, even if the client has not executed and delivered an assignment to the
13874 division as required by Subsection (1)(a).
13875 (c) The right to support described in Subsection (1)(b) includes a right to support in the
13876 applicant's or client's own behalf or in behalf of any family member for whom the applicant or
13877 client is applying for or receiving assistance.
13878 (2) An assignment of support or a passing of rights under Subsection (1)(b) includes
13879 payments ordered, decreed, or adjudged by any court within this state, any other state, or

13880 territory of the United States and is not in lieu of, and [~~shall not~~] does not supersede or alter,
13881 any other court order, decree, or judgment.
13882 (3) When an assignment is executed or the right to support passes to the department
13883 under Subsection (1)(b), the applicant or client is eligible to regular monthly assistance and the
13884 support paid to the division is a refund.
13885 (4) All sums refunded, except any amount which is required to be credited to the
13886 federal government, shall be deposited into the General Fund.
13887 (5) On and after the date a family stops receiving cash assistance, an assignment of
13888 support under Subsection (1) [~~shall not~~] does not apply to any support that accrued before the
13889 family received such assistance if the department has not collected the support by the date the
13890 family stops receiving cash assistance, if the assignment is executed on or after October 1,
13891 1998.
13892 (6) The department shall distribute arrearages to families in accordance with the Social
13893 Security Act, 42 U.S.C. Sec. 657.
13894 (7) The total amount of child support assigned to the department and collected under
13895 this section may not exceed the total amount of cash assistance received by the recipient.
13896 Section 332. Section **35A-3-304** is amended to read:
13897 **35A-3-304. Assessment -- Participation requirements and limitations -- Mentors.**
13898 (1) (a) Within 20 business days of the date of enrollment, a parent client shall:
13899 (i) be assigned an employment counselor; and
13900 (ii) complete an assessment provided by the division regarding the parent client's:
13901 (A) family circumstances;
13902 (B) education;
13903 (C) work history;
13904 (D) skills; and
13905 (E) ability to become self-sufficient.
13906 (b) The assessment provided under Subsection (1)(a)(ii) shall include a survey to be
13907 completed by the parent client with the assistance of the division.
13908 (2) (a) Within 15 business days of a parent client completing an assessment, the
13909 division and the parent client shall enter into an employment plan.
13910 (b) The employment plan shall have a target date for entry into employment.

13911 (c) The division shall provide a copy of the employment plan to the parent client.
13912 (d) As to the parent client, the plan may include:
13913 (i) job searching requirements;
13914 (ii) if the parent client does not have a high school diploma, participation in an
13915 educational program to obtain a high school diploma, or its equivalent;
13916 (iii) education or training necessary to obtain employment;
13917 (iv) a combination of work and education or training;
13918 (v) assisting the Office of Recovery Services in good faith to:
13919 (A) establish the paternity of a minor child; and
13920 (B) establish or enforce a child support order; and
13921 (vi) if the parent client is a drug dependent person as defined in Section 58-37-2,
13922 participation in available treatment for drug dependency and progress toward overcoming that
13923 dependency.
13924 (e) As to the division, the plan may include:
13925 (i) providing cash and other types of public and employment assistance, including child
13926 care;
13927 (ii) assisting the parent client to obtain education or training necessary for employment;
13928 (iii) assisting the parent client to set up and follow a household budget; and
13929 (iv) assisting the parent client to obtain employment.
13930 (f) The division may amend the employment plan to reflect new information or
13931 changed circumstances.
13932 (g) If immediate employment is an activity contained in the employment plan the
13933 parent client shall:
13934 (i) promptly commence a search for a specified number of hours each week for
13935 employment; and
13936 (ii) regularly submit a report to the division on:
13937 (A) how time was spent in search for a job;
13938 (B) the number of job applications completed;
13939 (C) the interviews attended;
13940 (D) the offers of employment extended; and
13941 (E) other related information required by the division.

13942 (h) (i) If full-time education or training to secure employment is an activity contained
13943 in an employment plan, the parent client shall promptly undertake a full-time education or
13944 training program.
13945 (ii) The employment plan may describe courses, education or training goals, and
13946 classroom hours.
13947 (i) (i) As a condition of receiving cash assistance under this part, a parent client shall
13948 agree to make a good faith effort to comply with the employment plan.
13949 (ii) If a parent client consistently fails to show good faith in complying with the
13950 employment plan, the division may seek under Subsection (2)(i)(iii) to terminate all or part of
13951 the cash assistance services provided under this part.
13952 (iii) The division shall establish a process to reconcile disputes between a client and the
13953 division as to whether:
13954 (A) the parent client has made a good faith effort to comply with the employment plan;
13955 or
13956 (B) the division has complied with the employment plan.
13957 (3) (a) Except as provided in Subsection (3)(b), a parent client's participation in
13958 education or training beyond that required to obtain a high school diploma or its equivalent is
13959 limited to the lesser of:
13960 (i) 24 months; or
13961 (ii) the completion of the education and training requirements of the employment plan.
13962 (b) A parent client may participate in education or training for up to six months beyond
13963 the 24-month limit of Subsection (3)(a)(i) if:
13964 (i) the parent client is employed for 80 or more hours a month; and
13965 (ii) the extension is for good cause shown and approved by the director.
13966 (c) A parent client who receives an extension under Subsection (3)(b) remains subject
13967 to Subsection (4).
13968 (4) (a) A parent client with a high school diploma or equivalent who has received 24
13969 months of education or training shall participate in full-time work activities.
13970 (b) The 24 months need not be continuous and the department may define "full-time
13971 work activities" by rule.
13972 (5) As a condition for receiving cash assistance on behalf of a minor child under this

13973 part, the minor child [~~must~~] shall be:
13974 (a) enrolled in and attending school in compliance with Sections 53A-11-101.5 and
13975 53A-11-101.7; or
13976 (b) exempt from school attendance under Section 53A-11-102.
13977 (6) This section does not apply to a person who has received diversion assistance under
13978 Section 35A-3-303.
13979 (7) (a) The division shall recruit and train volunteers to serve as mentors for parent
13980 clients.
13981 (b) A mentor may advocate on behalf of a parent client and help a parent client:
13982 (i) develop life skills;
13983 (ii) implement an employment plan; or
13984 (iii) obtain services and supports from:
13985 (A) the volunteer mentor;
13986 (B) the division; or
13987 (C) civic organizations.
13988 Section 333. Section **35A-3-310.5** is amended to read:
13989 **35A-3-310.5. Child care providers -- Criminal background checks -- Payment of**
13990 **costs -- Prohibitions -- Department rules.**
13991 (1) This section applies to a child care provider who:
13992 (a) is selected by an applicant for, or a recipient of, a child care assistance payment;
13993 (b) is not required to undergo a criminal background check with the Department of
13994 Health, Bureau of Child Care Licensing;
13995 (c) is not a license exempt child care center or program; and
13996 (d) is an eligible child care provider under department rules made in accordance with
13997 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
13998 (2) (a) Each child care provider identified under Subsection (1) shall submit to the
13999 department the name and other identifying information, which shall include a set of
14000 fingerprints, of:
14001 (i) existing, new, and proposed providers of child care; and
14002 (ii) individuals who are at least 18 years of age and reside in the premises where the
14003 child care is provided.

14004 (b) The department may waive the fingerprint requirement under Subsection (2)(a) for
14005 an individual who has:
14006 (i) resided in Utah for five years prior to the required submission; or
14007 (ii) (A) previously submitted a set of fingerprints under this section for a national
14008 criminal history record check; and
14009 (B) resided in Utah continuously since submitting the fingerprints.
14010 (c) The Utah Division of Criminal Investigation and Technical Services shall process
14011 and conduct background checks on all individuals as requested by the department, including
14012 submitting the fingerprints to the U.S. Federal Bureau of Investigation for a national criminal
14013 history background check of the individual.
14014 (d) If the department waives the fingerprint requirement under Subsection (2)(b), the
14015 Utah Division of Criminal Investigation and Technical Services may allow the department or
14016 its representative access to the division's data base to determine whether the individual has
14017 been convicted of a crime.
14018 (e) The child care provider shall pay the cost of the history background check provided
14019 under Subsection (2)(c).
14020 (3) (a) Each child care provider identified under Subsection (1) shall submit to the
14021 department the name and other identifying information of an individual, age 12 through 17,
14022 who resides in the premises where the child care is provided.
14023 (b) The identifying information referred to in Subsection (3)(a) does not include
14024 fingerprints.
14025 (c) The department or its representative shall access juvenile court records to determine
14026 whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile
14027 court of committing an act which, if committed by an adult, would be a felony or misdemeanor
14028 if:
14029 (i) the individual described in Subsection (2) is under the age of 28; or
14030 (ii) the individual described in Subsection (2):
14031 (A) is over the age of 28; and
14032 (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in
14033 abeyance or diversion agreement for a felony or misdemeanor.
14034 (4) Except as provided in Subsection (5), a child care provider under this section may

14035 not permit an individual who has been convicted of, has pleaded no contest to, or is currently
14036 subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or if
14037 Subsection (3)(b) applies, an individual who has been adjudicated in juvenile court of
14038 committing an act which if committed by an adult would be a felony or misdemeanor to:
14039 (a) provide subsidized child care; or
14040 (b) reside at the premises where subsidized child care is provided.
14041 (5) (a) The department may make a rule in accordance with Title 63G, Chapter 3, Utah
14042 Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection
14043 (4):
14044 (i) a specific misdemeanor;
14045 (ii) a specific act adjudicated in juvenile court, which if committed by an adult would
14046 be a misdemeanor; and
14047 (iii) background checks of individuals other than the provider who are residing at the
14048 premises where subsidized child care is provided if that child care is provided in the child's
14049 home.
14050 (b) In accordance with criteria established by rule, the executive director or the
14051 director's designee may consider and exempt individual cases, not otherwise exempt under
14052 Subsection (5)(a), from the restrictions of Subsection (4).
14053 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
14054 department shall establish by rule:
14055 (a) whether a child care subsidy payment should be made prior to the completion of a
14056 background check, particularly in the case of a delay in making or completing the background
14057 check; and
14058 (b) if, and how often, a child care provider [~~must~~] shall resubmit the information
14059 required under Subsections (2) and (3).
14060 Section 334. Section **35A-3-503** is amended to read:
14061 **35A-3-503. Legislative intent.**
14062 (1) The Legislature finds that public policy should promote and encourage a strong
14063 civic sector. Civic organizations have an important role that cannot be adequately addressed
14064 through either private or public sector action. Important public values such as the condition of
14065 our neighborhoods, the character of our children, and the renewal of our cities directly depend

14066 on the strength of families, neighborhoods, and grassroots community organizations, as well as
14067 the vitality of private and religious institutions that care for those in need. Civic organizations
14068 transmit values between generations, encourage cooperation between citizens, and ensure that
14069 our communities are livable and nurturing environments. The value provided to the state by
14070 civic organizations is called social capital.
14071 (2) The purpose of this part is to promote the availability of social capital. Using social
14072 capital, clients of and applicants for services under this chapter may receive a wide array of
14073 services and supports that cannot be provided by state government alone. Social capital links
14074 all parts of our society together by creating opportunities for service and giving. It facilitates
14075 trust and cooperation and enhances investments in physical and human capital.
14076 (3) In enacting this part, the Legislature recognizes the constitutional limits of state
14077 government to sustain civic institutions that provide social capital. While state government has
14078 always depended on these institutions, it does not create them nor can it replace them. This
14079 part recognizes that state government [~~must~~] shall respect, recognize, and, wherever possible,
14080 constitutionally encourage strong civic institutions that sustain a sense of community and
14081 humanize our lives.
14082 Section 335. Section **35A-4-303** is amended to read:
14083 **35A-4-303. Determination of contribution rates.**
14084 (1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio,
14085 determined by dividing the total benefit costs charged back to an employer during the
14086 immediately preceding four fiscal years by the total taxable wages of the employer for the same
14087 time period, calculated to four decimal places, disregarding the remaining fraction, if any.
14088 (b) In calculating the basic contribution rate under Subsection (1)(a):
14089 (i) if four fiscal years of data are not available, the data of three fiscal years shall be
14090 divided by the total taxable wages for the same time period;
14091 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be
14092 divided by the total taxable wages for the same time period; or
14093 (iii) if two fiscal years of data are not available, the data of one fiscal year shall be
14094 divided by the total taxable wages for the same time period.
14095 (2) (a) In calculating the social contribution rate under Subsection (2)(b) or (c):
14096 (i) if four fiscal years of data are not available, the data of three fiscal years shall be

14097 divided by the total taxable wages for the same time period; or
14098 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be
14099 divided by the total taxable wages for the same time period.
14100 (b) Beginning January 1, 2005, the division shall calculate the social contribution rate
14101 by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding
14102 four fiscal years by the total taxable wages of all employers subject to contributions for the
14103 same period, calculated to four decimal places, disregarding any remaining fraction.
14104 (c) Beginning January 1, 2009, the division shall calculate the social contribution rate
14105 by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding
14106 four fiscal years by the total taxable wages of all employers subject to contributions for the
14107 same period, calculated to four decimal places, disregarding any remaining fraction, and
14108 rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is
14109 .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or
14110 more.
14111 (3) (a) Beginning January 1, 2000, the division shall by administrative decision set the
14112 reserve factor at a rate that shall sustain an adequate reserve.
14113 (b) For the purpose of setting the reserve factor:
14114 (i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the
14115 average of the five highest benefit cost rates in the last 25 years;
14116 (B) beginning January 1, 2009, the adequate reserve is defined as between 18 and 24
14117 months of benefits at the average of the five highest benefit cost rates in the last 25 years;
14118 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30
14119 preceding the computation date is determined to be an adequate reserve;
14120 (iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund
14121 balance as of June 30 preceding the computation date is greater than the adequate reserve;
14122 (iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund
14123 balance as of June 30 prior to the computation date is less than the adequate reserve;
14124 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
14125 insolvent or negative or if there is an outstanding loan from the Federal Unemployment
14126 Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June
14127 30 preceding the computation date is determined to be an adequate reserve;

14128 (vi) the reserve factor will be set on or before January 1 of each year; and
14129 (vii) monies made available to the state under Section 903 of the Social Security Act,
14130 as amended, which are received on or after January 1, 2004, may not be considered in
14131 establishing the reserve factor under this section for the rate year 2005 or any subsequent rate
14132 year.
14133 (4) (a) On or after January 1, 2004, an employer's overall contribution rate is the
14134 employer's basic contribution rate multiplied by the reserve factor established according to
14135 Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the
14136 social contribution rate established according to Subsection (2), and calculated to three decimal
14137 places, disregarding the remaining fraction, but not more than a maximum overall contribution
14138 rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new
14139 employers.
14140 (b) Beginning January 1, 2009, an employer's overall contribution rate is the employer's
14141 basic contribution rate multiplied by the reserve factor established according to Subsection
14142 (3)(b), calculated to four decimal places, disregarding the remaining fraction, plus the social
14143 contribution rate established according to Subsection (2), and calculated to three decimal
14144 places, disregarding the remaining fraction, but not more than a maximum overall contribution
14145 rate of 9%, plus the applicable social contribution rate and not less than 1.1% for new
14146 employers.
14147 (c) The overall contribution rate does not include the addition of any penalty applicable
14148 to an employer as a result of delinquency in the payment of contributions as provided in
14149 Subsection (9).
14150 (d) The overall contribution rate does not include the addition of any penalty applicable
14151 to an employer assessed a penalty rate under Subsection 35A-4-304(5)(a).
14152 (5) Except as provided in Subsection (9), each new employer shall pay a contribution
14153 rate based on the average benefit cost rate experienced by employers of the major industry as
14154 defined by department rule to which the new employer belongs, the basic contribution rate to
14155 be determined as follows:
14156 (a) Except as provided in Subsection (5)(b), by January 1 of each year, the basic
14157 contribution rate to be used in computing the employer's overall contribution rate is the benefit
14158 cost rate which is the greater of:

14159 (i) the amount calculated by dividing the total benefit costs charged back to both active
14160 and inactive employers of the same major industry for the last two fiscal years by the total
14161 taxable wages paid by those employers that were paid during the same time period, computed
14162 to four decimal places, disregarding the remaining fraction, if any; or
14163 (ii) 1%.
14164 (b) If the major industrial classification assigned to a new employer is an industry for
14165 which a benefit cost rate does not exist because the industry has not operated in the state or has
14166 not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This
14167 basic contribution rate is used in computing the employer's overall contribution rate.
14168 (6) Notwithstanding any other provision of this chapter, and except as provided in
14169 Subsection (7), if an employing unit that moves into this state is declared to be a qualified
14170 employer because it has sufficient payroll and benefit cost experience under another state, a
14171 rate shall be computed on the same basis as a rate is computed for all other employers subject
14172 to this chapter if that unit furnishes adequate records on which to compute the rate.
14173 (7) An employer who begins to operate in this state after having operated in another
14174 state shall be assigned the maximum overall contribution rate until the employer acquires
14175 sufficient experience in this state to be considered a "qualified employer" if the employer is:
14176 (a) regularly engaged as a contractor in the construction, improvement, or repair of
14177 buildings, roads, or other structures on lands;
14178 (b) generally regarded as being a construction contractor or a subcontractor specialized
14179 in some aspect of construction; or
14180 (c) required to have a contractor's license or similar qualification under Title 58,
14181 Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.
14182 (8) (a) If an employer acquires the business or all or substantially all the assets of
14183 another employer and the other employer had discontinued operations upon the acquisition or
14184 transfers its trade or business, or a portion of its trade or business, under Subsection
14185 35A-4-304(3)(a):
14186 (i) for purposes of determining and establishing the acquiring party's qualifications for
14187 an experience rating classification, the payrolls of both employers during the qualifying period
14188 shall be jointly considered in determining the period of liability with respect to:
14189 (A) the filing of contribution reports;

14190 (B) the payment of contributions; and
14191 (C) after January 1, 1985, the benefit costs of both employers;
14192 (ii) the transferring employer shall be divested of the transferring employer's
14193 unemployment experience provided the transferring employer had discontinued operations, but
14194 only to the extent as defined under Subsection 35A-4-304(3)(c); and
14195 (iii) if an employer transfers its trade or business, or a portion of its trade or business,
14196 as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
14197 employer's unemployment experience.
14198 (b) An employing unit or prospective employing unit that acquires the unemployment
14199 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
14200 of acquisition.
14201 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
14202 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of
14203 the employer's business to another and by ceasing operations as of the date of the transfer, the
14204 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
14205 transfer.
14206 (9) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or
14207 after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall
14208 contribution rate on or after January 1, 1988, only with respect to new employers and to those
14209 qualified employers who, except for amounts due under division determinations that have not
14210 become final, paid all contributions prescribed by the division with respect to the four
14211 consecutive calendar quarters in the fiscal year immediately preceding the computation date on
14212 or after January 1, 1985.
14213 (b) Notwithstanding Subsections (1), (5), (6), and (8), on or after January 1, 1988, an
14214 employer who fails to pay all contributions prescribed by the division with respect to the four
14215 consecutive calendar quarters in the fiscal year immediately preceding the computation date,
14216 except for amounts due under determinations that have not become final, shall pay a
14217 contribution rate equal to the overall contribution rate determined under the experience rating
14218 provisions of this chapter, plus a surcharge of 1% of wages.
14219 (c) An employer who pays all required contributions shall, for the current contribution
14220 year, be assigned a rate based upon the employer's own experience as provided under the

14221 experience rating provisions of this chapter effective the first day of the calendar quarter in
14222 which the payment was made.
14223 (d) Delinquency in filing contribution reports [~~shall~~] may not be the basis for denial of
14224 a rate less than the maximum contribution rate.
14225 Section 336. Section **35A-4-304** is amended to read:
14226 **35A-4-304. Special provisions regarding transfers of unemployment experience**
14227 **and assignment rates.**
14228 (1) As used in this section:
14229 (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance
14230 or reckless disregard for the prohibition involved.
14231 (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal
14232 Revenue Code of 1986.
14233 (c) "Trade or business" includes the employer's workforce.
14234 (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or
14235 willful nondisclosure.
14236 (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall
14237 apply regarding assignment of rates and transfers of unemployment experience.
14238 (3) (a) If an employer transfers its trade or business, or a portion of its trade or
14239 business, to another employer and, at the time of the transfer, there is common ownership,
14240 management, or control of the employers, then the unemployment experience attributable to
14241 each employer shall be combined into a common experience rate calculation.
14242 (b) The contribution rates of the employers shall be recalculated and made effective
14243 upon the date of the transfer of trade or business as determined by division rule in accordance
14244 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
14245 (c) (i) If one or more of the employers is a qualified employer at the time of the
14246 transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of
14247 this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)(d),
14248 using combined unemployment experience rating factors, for the rate year during which the
14249 transfer occurred and for the subsequent three rate years.
14250 (ii) If none of the employing units is a qualified employer at the time of the transfer,
14251 then all employing units that are party to the transfer described in Subsection (3)(a) shall be

14252 assigned the highest overall contribution rate applicable at the time of the transfer to any
14253 employer who is party to the acquisition for the rate year during which the transfer occurred
14254 and for subsequent rate years until the time when one or more of the employing units is a
14255 qualified employer.
14256 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified
14257 employer, all the employing units shall be assigned an overall rate under Subsection
14258 35A-4-303(4)(d), using combined unemployment experience rating factors for subsequent rate
14259 years, not to exceed three years following the year of the transfer.
14260 (d) The transfer of some or all of an employer's workforce to another employer shall be
14261 considered a transfer of its trade or business when, as the result of the transfer, the transferring
14262 employer no longer performs trade or business with respect to the transferred workforce, and
14263 the trade or business is now performed by the employer to whom the workforce is transferred.
14264 (4) (a) Whenever a person is not an employer under this chapter at the time it acquires
14265 the trade or business of an employer, the unemployment experience of the acquired business
14266 [~~shall not~~] may not be transferred to that person if the division finds that the person acquired
14267 the business solely or primarily for the purpose of obtaining a lower rate of contributions.
14268 (b) The person shall be assigned the applicable new employer rate under Subsection
14269 35A-4-303(5).
14270 (c) In determining whether the business was acquired solely or primarily for the
14271 purpose of obtaining a lower rate of contributions, the division shall use objective factors
14272 which may include:
14273 (i) the cost of acquiring the business;
14274 (ii) whether the person continued the business enterprise of the acquired business;
14275 (iii) how long the business enterprise was continued; or
14276 (iv) whether a substantial number of new employees were hired for performance of
14277 duties unrelated to the business activity conducted prior to acquisition.
14278 (5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any
14279 other provision of this chapter related to determining the assignment of a contribution rate, or if
14280 a person knowingly advises another person in a way that results in a violation of any of those
14281 subsections or provisions, the person is subject to the following penalties:
14282 (i) (A) If the person is an employer, then the employer shall be assigned an overall

14283 contribution rate of 5.4% for the rate year during which the violation or attempted violation
14284 occurred and for the subsequent rate year.
14285 (B) If the person's business is already at 5.4% for any year, or if the amount of increase
14286 in the person's rate would be less than 2% for that year, then a penalty surcharge of
14287 contributions of 2% of taxable wages shall be imposed for the rate year during which the
14288 violation or attempted violation occurred and for the subsequent rate year.
14289 (ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of
14290 not more than $5,000.
14291 (B) The fine shall be deposited in the penalty and interest account established under
14292 Section 35A-4-506.
14293 (b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this
14294 section may be prosecuted as unemployment insurance fraud.
14295 (ii) The determination of the degree of an offense shall be measured by the total value
14296 of all contributions avoided or reduced or contributions sought to be avoided or reduced by the
14297 unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).
14298 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
14299 division shall make rules to identify the transfer or acquisition of a business for purposes of this
14300 section.
14301 (7) This section shall be interpreted and applied in a manner that meets the minimum
14302 requirements contained in any guidance or regulations issued by the United States Department
14303 of Labor.
14304 Section 337. Section **35A-4-305** is amended to read:
14305 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**
14306 (1) (a) Contributions unpaid on the date on which they are due and payable, as
14307 prescribed by the division, shall bear interest at the rate of 1% per month from and after that
14308 date until payment plus accrued interest is received by the division.
14309 (b) (i) Contribution reports not made and filed by the date on which they are due as
14310 prescribed by the division are subject to a penalty to be assessed and collected in the same
14311 manner as contributions due under this section equal to 5% of the contribution due if the failure
14312 to file on time was not more than 15 days, with an additional 5% for each additional 15 days or
14313 fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and

14314 not less than $25 with respect to each reporting period.
14315 (ii) If a report is filed after the required time and it is shown to the satisfaction of the
14316 division or its authorized representative that the failure to file was due to a reasonable cause
14317 and not to willful neglect, no addition shall be made to the contribution.
14318 (c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal
14319 delivery by the division or its authorized representative, of a written demand for payment, there
14320 shall attach to the contribution, to be assessed and collected in the same manner as
14321 contributions due under this section, a penalty equal to 5% of the contribution due.
14322 (ii) A penalty may not attach if within 10 days after the mailing or personal delivery,
14323 arrangements for payment have been made with the division, or its authorized representative,
14324 and payment is made in accordance with those arrangements.
14325 (d) The division shall assess as a penalty a service charge, in addition to any other
14326 penalties that may apply, in an amount not to exceed the service charge imposed by Section
14327 7-15-1 for dishonored instruments if:
14328 (i) any amount due the division for contributions, interest, other penalties or benefit
14329 overpayments is paid by check, draft, order, or other instrument; and
14330 (ii) the instrument is dishonored or not paid by the institution against which it is drawn.
14331 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit
14332 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years
14333 after they become due, may be charged as uncollectible and removed from the records of the
14334 division if:
14335 (i) no assets belonging to the liable person and subject to attachment can be found; and
14336 (ii) in the opinion of the division there is no likelihood of collection at a future date.
14337 (f) Interest and penalties collected in accordance with this section shall be paid into the
14338 Special Administrative Expense Account created by Section 35A-4-506.
14339 (g) Action required for the collection of sums due under this chapter is subject to the
14340 applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.
14341 (2) (a) If an employer fails to file a report when prescribed by the division for the
14342 purpose of determining the amount of the employer's contribution due under this chapter, or if
14343 the report when filed is incorrect or insufficient or is not satisfactory to the division, the
14344 division may determine the amount of wages paid for employment during the period or periods

14345 with respect to which the reports were or should have been made and the amount of
14346 contribution due from the employer on the basis of any information it may be able to obtain.
14347 (b) The division shall give written notice of the determination to the employer.
14348 (c) The determination is considered correct unless:
14349 (i) the employer, within 10 days after mailing or personal delivery of notice of the
14350 determination, applies to the division for a review of the determination as provided in Section
14351 35A-4-508; or
14352 (ii) unless the division or its authorized representative of its own motion reviews the
14353 determination.
14354 (d) The amount of contribution determined under Subsection (2)(a) is subject to
14355 penalties and interest as provided in Subsection (1).
14356 (3) (a) If, after due notice, an employer defaults in the payment of contributions,
14357 interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit
14358 overpayments and penalties on the overpayments, the amount due shall be collectible by civil
14359 action in the name of the division, and the employer adjudged in default shall pay the costs of
14360 the action.
14361 (b) Civil actions brought under this section to collect contributions, interest, or
14362 penalties from an employer, or benefit overpayments and penalties from a claimant shall be:
14363 (i) heard by the court at the earliest possible date; and
14364 (ii) entitled to preference upon the calendar of the court over all other civil actions
14365 except:
14366 (A) petitions for judicial review under this chapter; and
14367 (B) cases arising under the workers' compensation law of this state.
14368 (c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments and
14369 penalties due from employers or claimants located outside Utah, the division may employ
14370 private collectors providing debt collection services outside Utah.
14371 (B) Accounts may be placed with private collectors only after the employer or claimant
14372 has been given a final notice that the division intends to place the account with a private
14373 collector for further collection action.
14374 (C) The notice shall advise the employer or claimant of the employer's or claimant's
14375 rights under this chapter and the applicable rules of the department.

14376 (ii) (A) A private collector may receive as compensation up to 25% of the lesser of the
14377 amount collected or the amount due, plus the costs and fees of any civil action or postjudgment
14378 remedy instituted by the private collector with the approval of the division.
14379 (B) The employer or claimant shall be liable to pay the compensation of the collector,
14380 costs, and fees in addition to the original amount due.
14381 (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15
14382 U.S.C. Sec. 1692 et seq.
14383 (iv) (A) A civil action may not be maintained by a private collector without specific
14384 prior written approval of the division.
14385 (B) When division approval is given for civil action against an employer or claimant,
14386 the division may cooperate with the private collector to the extent necessary to effect the civil
14387 action.
14388 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,
14389 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer
14390 or claimant, and the employer's or claimant's address and telephone number when any
14391 collection matter is referred to a private collector under Subsection (3)(c).
14392 (ii) A private collector is subject to the confidentiality requirements and penalty
14393 provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent
14394 disclosure is necessary in a civil action to enforce collection of the amounts due.
14395 (e) An action taken by the division under this section may not be construed to be an
14396 election to forego other collection procedures by the division.
14397 (4) (a) In the event of a distribution of an employer's assets under an order of a court
14398 under the laws of Utah, including a receivership, assignment for benefits of creditors,
14399 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter
14400 due shall be paid in full prior to all other claims except taxes and claims for wages of not more
14401 than $400 to each claimant, earned within five months of the commencement of the
14402 proceeding.
14403 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a
14404 chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and
14405 Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due
14406 shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy

14407 Abuse Prevention and Consumer Protection Act of 2005.
14408 (5) (a) In addition and as an alternative to any other remedy provided by this chapter
14409 and provided that no appeal or other proceeding for review provided by this chapter is then
14410 pending and the time for taking it has expired, the division may issue a warrant in duplicate,
14411 under its official seal, directed to the sheriff of any county of the state, commanding the sheriff
14412 to levy upon and sell the real and personal property of a delinquent employer or claimant found
14413 within the sheriff's county for the payment of the contributions due, with the added penalties,
14414 interest, or benefit overpayment and penalties, and costs, and to return the warrant to the
14415 division and pay into the fund the money collected by virtue of the warrant by a time to be
14416 specified in the warrant, not more than 60 days from the date of the warrant.
14417 (b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the
14418 duplicate with the clerk of the district court in the sheriff's county.
14419 (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors,
14420 the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate
14421 columns the amount of the contribution, penalties, interest, or benefit overpayment and
14422 penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.
14423 (c) The amount of the docketed warrant shall:
14424 (i) have the force and effect of an execution against all personal property of the
14425 delinquent employer; and
14426 (ii) become a lien upon the real property of the delinquent employer or claimant in the
14427 same manner and to the same extent as a judgment duly rendered by a district court and
14428 docketed in the office of the clerk.
14429 (d) After docketing, the sheriff shall:
14430 (i) proceed in the same manner as is prescribed by law with respect to execution issued
14431 against property upon judgments of a court of record; and
14432 (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be
14433 collected in the same manner.
14434 (6) (a) Contributions imposed by this chapter are a lien upon the property of an
14435 employer liable for the contribution required to be collected under this section who shall sell
14436 out the employer's business or stock of goods or shall quit business, if the employer fails to
14437 make a final report and payment on the date subsequent to the date of selling or quitting

14438 business on which they are due and payable as prescribed by rule.
14439 (b) (i) An employer's successor, successors, or assigns, if any, are required to withhold
14440 sufficient of the purchase money to cover the amount of the contributions and interest or
14441 penalties due and payable until the former owner produces a receipt from the division showing
14442 that they have been paid or a certificate stating that no amount is due.
14443 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase
14444 money, the purchaser is personally liable for the payment of the amount of the contributions
14445 required to be paid by the former owner, interest and penalties accrued and unpaid by the
14446 former owner, owners, or assignors.
14447 (7) (a) If an employer is delinquent in the payment of a contribution, the division may
14448 give notice of the amount of the delinquency by registered mail to all persons having in their
14449 possession or under their control, any credits or other personal property belonging to the
14450 employer, or owing any debts to the employer at the time of the receipt by them of the notice.
14451 (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other
14452 disposition of the credits, other personal property, or debts until:
14453 (i) the division has consented to a transfer or disposition; or
14454 (ii) 20 days after the receipt of the notice.
14455 (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of
14456 the notice, advise the division of credits, other personal property, or other debts in their
14457 possession, under their control or owing by them, as the case may be.
14458 (8) (a) (i) Each employer shall furnish the division necessary information for the proper
14459 administration of this chapter and shall include wage information for each employee, for each
14460 calendar quarter.
14461 (ii) The information shall be furnished at a time, in the form, and to those individuals
14462 as the department may by rule require.
14463 (b) (i) Each employer shall furnish each individual worker who is separated that
14464 information as the department may by rule require, and shall furnish within 48 hours of the
14465 receipt of a request from the division a report of the earnings of any individual during the
14466 individual's base-period.
14467 (ii) The report shall be on a form prescribed by the division and contain all information
14468 prescribed by the division.

14469 (c) (i) For each failure by an employer to conform to this Subsection (8) the division
14470 shall, unless good cause is shown, assess a $50 penalty if the filing was not more than 15 days
14471 late.
14472 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty
14473 of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250
14474 per filing.
14475 (iii) The penalty is to be collected in the same manner as contributions due under this
14476 chapter.
14477 (d) (i) The division shall prescribe rules providing standards for determining which
14478 contribution reports [~~must~~] shall be filed on magnetic or electronic media or in other
14479 machine-readable form.
14480 (ii) In prescribing these rules, the division:
14481 (A) may not require an employer to file contribution reports on magnetic or electronic
14482 media unless the employer is required to file wage data on at least 250 employees during any
14483 calendar quarter or is an authorized employer representative who files quarterly tax reports on
14484 behalf of 100 or more employers during any calendar quarter;
14485 (B) shall take into account, among other relevant factors, the ability of the employer to
14486 comply at reasonable cost with the requirements of the rules; and
14487 (C) may require an employer to post a bond for failure to comply with the rules
14488 required by this Subsection (8)(d).
14489 (9) (a) (i) An employer liable for payments in lieu of contributions shall file
14490 Reimbursable Employment and Wage Reports.
14491 (ii) The reports are due on the last day of the month that follows the end of each
14492 calendar quarter unless the division, after giving notice, changes the due date.
14493 (iii) A report postmarked on or before the due date is considered timely.
14494 (b) (i) Unless the employer can show good cause, the division shall assess a $50
14495 penalty against an employer who does not file Reimbursable Employment and Wage Reports
14496 within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.
14497 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty
14498 of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250
14499 per filing.

14500 (iii) The division shall assess and collect the penalties referred to in this Subsection
14501 (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.
14502 (10) If a person liable to pay a contribution or benefit overpayment imposed by this
14503 chapter neglects or refuses to pay it after demand, the amount, including any interest, additional
14504 amount, addition to contributions, or assessable penalty, together with any additional accruable
14505 costs, shall be a lien in favor of the division upon all property and rights to property, whether
14506 real or personal belonging to the person.
14507 (11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as
14508 defined in the department rules, is made and continues until the liability for the amount
14509 assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.
14510 (b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder
14511 of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a
14512 warrant with the clerk of the district court.
14513 (ii) For the purposes of this Subsection (11)(b):
14514 (A) "Judgment lien creditor" means a person who obtains a valid judgment of a court
14515 of record for recovery of specific property or a sum certain of money, and who in the case of a
14516 recovery of money, has a perfected lien under the judgment on the property involved. A
14517 judgment lien does not include inchoate liens such as attachment or garnishment liens until
14518 they ripen into a judgment. A judgment lien does not include the determination or assessment
14519 of a quasi-judicial authority, such as a state or federal taxing authority.
14520 (B) "Mechanics' lien holder" means any person who has a lien on real property, or on
14521 the proceeds of a contract relating to real property, for services, labor, or materials furnished in
14522 connection with the construction or improvement of the property. A person has a lien on the
14523 earliest date the lien becomes valid against subsequent purchasers without actual notice, but not
14524 before the person begins to furnish the services, labor, or materials.
14525 (C) "Person" means:
14526 (I) an individual;
14527 (II) a trust;
14528 (III) an estate;
14529 (IV) a partnership;
14530 (V) an association;

14531 (VI) a company;
14532 (VII) a limited liability company;
14533 (VIII) a limited liability partnership; or
14534 (IX) a corporation.
14535 (D) "Purchaser" means a person who, for adequate and full consideration in money or
14536 money's worth, acquires an interest, other than a lien or security interest, in property which is
14537 valid under state law against subsequent purchasers without actual notice.
14538 (E) "Security interest" means any interest in property acquired by contract for the
14539 purpose of securing payment or performance of an obligation or indemnifying against loss or
14540 liability. A security interest exists at any time:
14541 (I) the property is in existence and the interest has become protected under the law
14542 against a subsequent judgment lien arising out of an unsecured obligation; and
14543 (II) to the extent that, at that time, the holder has parted with money or money's worth.
14544 Section 338. Section **35A-4-309** is amended to read:
14545 **35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of**
14546 **contributions.**
14547 (1) Notwithstanding any other provisions of this chapter for payments by employers,
14548 benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the
14549 Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section
14550 501(a), shall be financed in accordance with the following provisions:
14551 (a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay
14552 contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1)
14553 to pay to the division for the unemployment fund an amount equal to the amount of regular
14554 benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of
14555 the nonprofit organization, to individuals for weeks of unemployment that begin during the
14556 effective period of this election.
14557 (b) (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect
14558 to become liable for payments in lieu of contributions for a period of not less than one
14559 contribution year beginning with the date on which the organization becomes subject to this
14560 chapter.
14561 (ii) The nonprofit organization shall file a written notice of its election with the

14562 division not later than 30 days immediately following the date that the division gives notice to
14563 the organization that it is subject to this chapter.
14564 (c) Any nonprofit organization that makes an election in accordance with Subsection
14565 (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the
14566 division a written notice terminating its election, not later than 30 days prior to the beginning of
14567 the contribution year for which this termination shall first be effective.
14568 (d) (i) Any nonprofit organization that has been paying contributions under this chapter
14569 may change to a reimbursable basis by filing with the division, no later than 30 days prior to
14570 the beginning of any contribution year, a written notice of election to become liable for
14571 payments in lieu of contributions.
14572 (ii) This election is not terminable by the organization for that year or the next year.
14573 (e) The division may, for good cause, extend the period within which a notice of
14574 election or a notice of termination [~~must~~] shall be filed and may permit an election to be
14575 retroactive.
14576 (f) (i) The division, in accordance with department rules, shall notify each nonprofit
14577 organization of any determination that the division may make of the organization's status as an
14578 employer, of the effective date of any election that it makes, and of any termination of this
14579 election.
14580 (ii) These determinations are subject to reconsideration, appeal, and review in
14581 accordance with Section 35A-4-508.
14582 (2) Payments in lieu of contributions shall be made in accordance with this Subsection
14583 (2).
14584 (a) At the end of each calendar month, or at the end of any other period as determined
14585 by the division, the division shall bill each nonprofit organization or group of nonprofit
14586 organizations that has elected to make payments in lieu of contributions for an amount equal to
14587 the full amount of regular benefits plus [~~1/2~~] one-half of the amount of extended benefits paid
14588 during this month or other prescribed period that is attributable to service in the employ of the
14589 organization.
14590 (b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30
14591 days after the bill was mailed to the last-known address of the nonprofit organization or was
14592 otherwise delivered to it, unless there has been an application for review and redetermination in

14593 accordance with Subsection (2)(d).
14594 (c) Payments made by any nonprofit organization under this Subsection (2) may not be
14595 deducted or deductible, in whole or in part, from the remuneration of individuals in the employ
14596 of the organization.
14597 (d) (i) The amount due specified in any bill from the division shall be conclusive on
14598 the organization unless, not later than 15 days after the bill was mailed to its last-known
14599 address or otherwise delivered to it, the organization files an application for redetermination by
14600 the division or an appeal to the Division of Adjudication, setting forth the grounds for the
14601 application or appeal in accordance with Section 35A-4-508.
14602 (ii) The division shall promptly review and reconsider the amount due specified in the
14603 bill and shall thereafter issue a redetermination in any case in which the application for
14604 redetermination has been filed.
14605 (iii) Any redetermination is conclusive on the organization unless, no later than 15
14606 days after the redetermination was mailed to its last known address or otherwise delivered to it,
14607 the organization files an appeal to the Division of Adjudication in accordance with Section
14608 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the
14609 appeal.
14610 (iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill
14611 rendered under this Subsection (2) or a redetermination of the amount shall be in accordance
14612 with Section 35A-4-508.
14613 (e) Past due payments of amounts in lieu of contributions are subject to the same
14614 interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.
14615 (3) If any nonprofit organization is delinquent in making payments in lieu of
14616 contributions as required under Subsection (2), the division may terminate the organization's
14617 election to make payment in lieu of contributions as of the beginning of the next contribution
14618 year, and the termination is effective for that and the next contribution year.
14619 (4) (a) In the discretion of the division, any nonprofit organization that elects to
14620 become liable for payments in lieu of contributions shall be required, within 30 days after the
14621 effective date of its election, to deposit money with the division.
14622 (b) The amount of the deposit shall be determined in accordance with this Subsection
14623 (4).

14624 (c) (i) The amount of the deposit required by this Subsection (4) shall be equal to 1%
14625 of the organization's total wages paid for employment as defined in Section 35A-4-204 for the
14626 four calendar quarters immediately preceding the effective date of the election, or the biennial
14627 anniversary of the effective date of election, whichever date shall be most recent and
14628 applicable.
14629 (ii) If the nonprofit organization did not pay wages in each of these four calendar
14630 quarters, the amount of the deposit is as determined by the division.
14631 (d) (i) Any deposit of money in accordance with this Subsection (4) shall be retained
14632 by the division in an escrow account until liability under the election is terminated, at which
14633 time it shall be returned to the organization, less any deductions as provided in this Subsection
14634 (4).
14635 (ii) The division may deduct from the money deposited under this Subsection (4) by a
14636 nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of
14637 contributions and any applicable interest and penalties provided for in Subsection (2)(e).
14638 (iii) The division shall require the organization within 30 days following any
14639 deduction from a money deposit under this Subsection (4) to deposit sufficient additional
14640 money to make whole the organization's deposit at the prior level.
14641 (iv) (A) The division may, at any time, review the adequacy of the deposit made by any
14642 organization.
14643 (B) If, as a result of this review, the division determines that an adjustment is
14644 necessary, it shall require the organization to make an additional deposit within 30 days of
14645 written notice of the division's determination or shall return to it any portion of the deposit the
14646 division no longer considers necessary, as considered appropriate.
14647 (e) If any nonprofit organization fails to make a deposit, or to increase or make whole
14648 the amount of a previously made deposit, as provided under this Subsection (4), the division
14649 may terminate the organization's election to make payments in lieu of contributions.
14650 (f) (i) Termination under Subsection (4)(e) shall continue for not less than the
14651 four-consecutive-calendar-quarter period beginning with the quarter in which the termination
14652 becomes effective.
14653 (ii) The division may extend for good cause the applicable filing, deposit, or
14654 adjustment period by not more than 60 days.

14655 (5) (a) Each employer liable for payments in lieu of contributions shall pay to the
14656 division for the fund the amount of regular benefits plus the amount of [~~1/2~~] one-half of
14657 extended benefits paid that are attributable to service in the employ of the employer.
14658 (b) If benefits paid to an individual are based on wages paid by more than one
14659 employer and one or more of these employers are liable for payments in lieu of contributions,
14660 the amount payable to the fund by each employer liable for the payments shall be determined in
14661 accordance with Subsection (5)(c) or (d).
14662 (c) If benefits paid to an individual are based on wages paid by one or more employers
14663 who are liable for payments in lieu of contributions and on wages paid by one or more
14664 employers who are liable for contributions, the amount of benefits payable by each employer
14665 that is liable for payments in lieu of contributions shall be an amount that bears the same ratio
14666 to the total benefits paid to the individual as the total base-period wages paid to the individual
14667 by that employer bear to the total base-period wages paid to the individual by all of the
14668 individual's base-period employers.
14669 (d) If benefits paid to an individual are based on wages paid by two or more employers
14670 who are liable for payments in lieu of contributions, the amount of benefits payable by each of
14671 those employers shall be an amount which bears the same ratio to the total benefits paid to the
14672 individual as the total base-period wages paid to the individual by the employer bear to the total
14673 base-period wages paid to the individual by all of the individual's base-period employers.
14674 (6) (a) (i) Two or more employers who have become liable for payments in lieu of
14675 contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint
14676 application to the division for the establishment of a group account for the purpose of sharing
14677 the cost of benefits paid that are attributable to service in the employ of these employers.
14678 (ii) Each application shall identify and authorize a group representative to act as the
14679 group's agent for the purpose of this Subsection (6).
14680 (b) (i) Upon approval of the application, the division shall establish a group account for
14681 these employers effective as of the beginning of the calendar quarter in which it receives the
14682 application and shall notify the group's representative of the effective date of the account.
14683 (ii) This account shall remain in effect for not less than two contribution years and
14684 thereafter until terminated at the discretion of the division or upon application by the group.
14685 (c) Upon establishment of the account, each member of the group is liable for

14686 payments in lieu of contributions with respect to each calendar quarter in the amount that bears
14687 the same ratio to the total benefits paid in the quarter attributable to service performed in the
14688 employ of all members of the group as the total wages paid for service in employment by the
14689 member in the quarter bear to the total wages paid during the quarter for service performed in
14690 the employ of all members of the group.
14691 (d) The department shall prescribe rules, with respect to applications for establishment,
14692 maintenance, and termination of group accounts authorized by this Subsection (6), for addition
14693 of new members to, and withdrawal of active members from, these accounts, for the
14694 determination of the amounts that are payable under this Subsection (6) by members of the
14695 group, and the time and manner of these payments.
14696 (7) (a) An employing unit that acquires a nonprofit organization or substantially all the
14697 assets of a nonprofit organization that has elected reimbursable coverage as defined in
14698 Subsection (1), in accordance with rules made by the commission, shall be given the subject
14699 date of the transferring nonprofit organization, provided the transferring nonprofit organization
14700 ceases to operate as an employing unit at the point of acquisition.
14701 (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the
14702 transferring nonprofit organization's share of any unreimbursed benefits paid to former
14703 employees of the transferring nonprofit organization.
14704 Section 339. Section **35A-4-311** is amended to read:
14705 **35A-4-311. Coverage and liability of governmental units or Indian tribal units --**
14706 **Payments in lieu of contributions -- Delinquencies -- Payments to division.**
14707 (1) Notwithstanding any other provisions of this chapter, benefits paid to employees of
14708 counties, cities, towns, school districts, political subdivisions, or their instrumentalities or
14709 Indian tribes or tribal units shall be financed in accordance with the following provisions:
14710 (a) Any county, city, town, school district, political subdivision, or instrumentality
14711 thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay
14712 contributions under the provisions of Section 35A-4-302, or may elect to pay to the division
14713 for the unemployment fund an amount equal to the amount of regular benefits and, as provided
14714 in Subsection (4), the extended benefits attributable to service in the employ of such
14715 organization, and paid to individuals for weeks of unemployment that begin during the
14716 effective period of such election.

14717 (b) Any county, city, town, school district, political subdivision, or instrumentality
14718 thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or
14719 becomes subject to this chapter may elect to become liable for payments in lieu of
14720 contributions for a period of not less than one contribution year beginning with the date on
14721 which the organization becomes subject to this chapter by filing a written notice of its election
14722 with the division not later than 30 days immediately following the date that the division gives
14723 notice to the organization that it is subject to this chapter.
14724 (c) Any county, city, town, school district, political subdivision, or instrumentality
14725 thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election
14726 in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of
14727 contributions until it files with the division a written notice terminating its election. A notice
14728 terminating such election [~~must~~] shall be filed by January 31 of the year in which the
14729 termination is to be effective.
14730 (d) Any county, city, town, school district, political subdivision, or instrumentality
14731 thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have
14732 been paying contributions under this chapter may change to a reimbursable basis by filing with
14733 the division, no later than 30 days prior to the beginning of any contribution year, a written
14734 notice of election to become liable for payments in lieu of contributions; the organization may
14735 not terminate such election for a period of two contribution years.
14736 (e) The division may, for good cause, extend the period within which a notice of
14737 election or a notice of termination [~~must~~] shall be filed and may permit an election to be
14738 retroactive.
14739 (f) The division, in accordance with department rules, shall notify each county, city,
14740 town, school district, political subdivision, or Indian tribes or tribal units, or their
14741 instrumentalities of any determination that it may make of its status as an employer, or the
14742 effective date of any election which it makes, and of any termination of such election. The
14743 determinations shall be subject to reconsideration, appeal, and review in accordance with the
14744 provisions of Section 35A-4-508.
14745 (2) Payments in lieu of contributions shall be made in accordance with the provisions
14746 of this Subsection (2).
14747 (a) At the end of each calendar month, or at the end of any other period as determined

14748 by the division, the division shall bill each county, city, town, school district, political
14749 subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to
14750 make payments in lieu of contributions for an amount equal to the full amount of regular
14751 benefits and, as provided in Subsection (4), the amount of extended benefits paid during such
14752 month or other prescribed period that is attributable to service in the employ of such county,
14753 city, town, school district, political subdivision, or instrumentality thereof.
14754 (b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than
14755 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise
14756 delivered to it, unless there has been an application for review and redetermination in
14757 accordance with Subsection (2)(c).
14758 (c) (i) The amount due specified in any bill from the division shall be conclusive on the
14759 governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or
14760 otherwise delivered to it, the governmental unit or tribal unit files an application for
14761 redetermination by the division or an appeal, setting forth the grounds for such application or
14762 appeal.
14763 (ii) Upon an application for redetermination the division shall promptly review and
14764 reconsider the amount due specified in the bill and shall thereafter issue a redetermination.
14765 (iii) Any such redetermination shall be conclusive on the governmental unit or tribal
14766 unit unless, no later than 15 days after the redetermination was mailed to its last known address
14767 or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the
14768 grounds for the appeal.
14769 (iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2)
14770 or a redetermination of the amount shall be in accordance with the provisions of Section
14771 35A-4-508.
14772 (d) Past due payments of amounts in lieu of contributions shall be subject to the same
14773 interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.
14774 (3) (a) If any governmental unit or tribal unit is delinquent in making payments in lieu
14775 of contributions as required under Subsection (2), the division may terminate the governmental
14776 unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of
14777 the next contribution year, and the termination shall be effective for that and the next
14778 contribution year.

14779 (b) (i) Failure of the Indian tribe or tribal unit to make required payments, including
14780 assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the
14781 Indian tribe to lose the option to make payments in lieu of contributions, as described in
14782 Subsection 35A-4-311(1), for the following tax year unless payment in full is received before
14783 contribution rates for the next tax year are computed.
14784 (ii) Any Indian tribe that loses the option to make payments in lieu of contributions due
14785 to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option
14786 reinstated if, after a period of one year:
14787 (A) all contributions have been made timely; and
14788 (B) no contributions, payments in lieu of contributions for benefits paid, penalties, or
14789 interest remain outstanding.
14790 (iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units
14791 shall include information that failure to make full payment within the prescribed time frame:
14792 (A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment
14793 Tax Act; and
14794 (B) will cause the Indian tribe to lose the option to make payments in lieu of
14795 contributions.
14796 (4) Each governmental unit or tribal unit liable for payments in lieu of contributions
14797 shall pay to the division for the fund the amount of regular benefits plus the amount of
14798 extended benefits paid that are attributable to service in the employ of such governmental unit
14799 or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of
14800 contributions shall, with respect to extended benefit costs for weeks of unemployment
14801 beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect
14802 to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979,
14803 shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by
14804 more than one employer and one or more of such employers are liable for payments in lieu of
14805 contributions, the amount payable to the fund by each employer liable for the payments shall be
14806 determined in accordance with Subsection (4)(a) or (4)(b).
14807 (a) If benefits paid to an individual are based on wages paid by one or more employers
14808 who are liable for payments in lieu of contributions and on wages paid by one or more
14809 employers who are liable for contributions, the amount of benefits payable by each employer

14810 that is liable for payments in lieu of contributions shall be an amount that bears the same ratio
14811 to the total benefits paid to the individual as the total base-period wages paid to the individual
14812 by such employer bear to the total base-period wages paid to the individual by all of his
14813 base-period employers.
14814 (b) If benefits paid to an individual are based on wages paid by two or more employers
14815 who are liable for payments in lieu of contributions, the amount of benefits payable by each
14816 such employer shall be an amount that bears the same ratio to the total benefits paid to the
14817 individual as the total base-period wages paid to the individual by such employer bear to the
14818 total base-period wages paid to the individual by all of his base-period employers.
14819 (5) (a) Two or more Indian tribe or tribal unit employers who have become liable for
14820 payments in lieu of contributions, in accordance with the provisions of this section and
14821 Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment
14822 of a group account for the purpose of sharing the cost of benefits paid that are attributable to
14823 service in the employ of these employers. Each application shall identify and authorize a group
14824 representative to act as the group's agent for the purpose of this Subsection (5).
14825 (b) Upon approval of the application, the division shall establish a group account for
14826 these employers effective as of the beginning of the calendar quarter in which it receives the
14827 application and shall notify the group's representative of the effective date of the account. This
14828 account shall remain in effect for not less than one contribution year and thereafter until
14829 terminated at the discretion of the division or upon application by the group.
14830 (c) Upon establishment of the account, each member of the group shall be liable for
14831 payments in lieu of contributions with respect to each calendar quarter in the amount that bears
14832 the same ratio to the total benefits paid in the quarter attributable to service performed in the
14833 employ of all members of the group as the total wages paid for service in employment by such
14834 member in the quarter bear to the total wages paid during the quarter for service performed in
14835 the employ of all members of the group.
14836 Section 340. Section **35A-4-404** is amended to read:
14837 **35A-4-404. Eligibility for benefits after receiving workers' compensation or**
14838 **occupational disease compensation.**
14839 (1) Notwithstanding any requirements involving base periods or other benefit
14840 compensational factors provided for under this chapter a person who has had a continuous

14841 period of sickness or injury for which [~~he~~] the person was compensated under the workers'
14842 compensation or the occupational disease laws of this state or under federal law shall, if [~~he~~]
14843 the person is otherwise eligible, thereafter be entitled to receive the unemployment
14844 compensation benefits [~~he~~] the person would have been entitled to receive under the law and
14845 regulations based on [~~his~~] the person's potential eligibility at the time of [~~his~~] the person's last
14846 employment.
14847 (2) Benefit rights [~~shall not be~~] are not preserved under this section unless the
14848 individual:
14849 (a) files a claim for benefits with respect to a week no later than 90 days after the end
14850 of the continuous period of sickness or injury; and
14851 (b) files the claim with respect to a week within the 36-month period immediately
14852 following the commencement of such period of sickness or injury.
14853 Section 341. Section **35A-4-501** is amended to read:
14854 **35A-4-501. Unemployment Compensation Fund -- Administration -- Contents --**
14855 **Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances**
14856 **under Social Security Act.**
14857 (1) (a) There is established the Unemployment Compensation Fund, separate and apart
14858 from all public money or funds of this state, that shall be administered by the department
14859 exclusively for the purposes of this chapter.
14860 (b) This fund shall consist of the following money, all of which shall be mingled and
14861 undivided:
14862 (i) all contributions collected under this chapter, less refunds of contributions made
14863 from the clearing account under Subsection 35A-4-306(5);
14864 (ii) interest earned upon any money in the fund;
14865 (iii) any property or securities acquired through the use of money belonging to the
14866 fund;
14867 (iv) all earnings of the property or securities;
14868 (v) all money credited to this state's account in the unemployment trust fund under
14869 Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and
14870 (vi) all other money received for the fund from any other source.
14871 (2) (a) The state treasurer shall:

14872 (i) be the treasurer and custodian of the fund;
14873 (ii) administer the fund in accordance with the directions of the division; and
14874 (iii) pay all warrants drawn upon it by the division or its duly authorized agent in
14875 accordance with rules made by the department.
14876 (b) The division shall maintain within the fund three separate accounts:
14877 (i) a clearing account;
14878 (ii) an unemployment trust fund account; and
14879 (iii) a benefit account.
14880 (c) All money payable to the fund, upon receipt by the division, shall be immediately
14881 deposited in the clearing account.
14882 (d) (i) All money in the clearing account after clearance shall, except as otherwise
14883 provided in this section, be deposited immediately with the secretary of the treasury of the
14884 United States of America to the credit of the account of this state in the unemployment trust
14885 fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104,
14886 as amended, any provisions of law in this state relating to the deposit, administration, release,
14887 or disbursement of money in the possession or custody of this state to the contrary
14888 notwithstanding.
14889 (ii) Refunds of contributions payable under Subsections 35A-4-205(1)(a) and
14890 35A-4-306(5) may be paid from the clearing account or the benefit account.
14891 (e) The benefit account shall consist of all money requisitioned from this state's
14892 account in the unemployment trust fund in the United States treasury.
14893 (f) Money in the clearing and benefit accounts may be deposited in any depository bank
14894 in which general funds of this state may be deposited, but no public deposit insurance charge or
14895 premium may be paid out of the fund.
14896 (g) (i) Money in the clearing and benefit accounts may not be commingled with other
14897 state funds, but shall be maintained in separate accounts on the books of the depository bank.
14898 (ii) The money shall be secured by the depository bank to the same extent and in the
14899 same manner as required by the general depository law of this state.
14900 (iii) Collateral pledged for this purpose shall be kept separate and distinct from any
14901 collateral pledged to secure other funds of the state.
14902 (h) (i) The state treasurer is liable on the state treasurer's official bond for the faithful

14903 performance of the state treasurer's duties in connection with the unemployment compensation
14904 fund provided for under this chapter.
14905 (ii) The liability on the official bond shall be effective immediately upon the enactment
14906 of this provision, and that liability shall exist in addition to the liability upon any separate bond
14907 existent on the effective date of this provision, or which may be given in the future.
14908 (iii) All sums recovered for losses sustained by the fund shall be deposited in the fund.
14909 (3) (a) (i) Money requisitioned from the state's account in the unemployment trust fund
14910 shall, except as set forth in this section, be used exclusively for the payment of benefits and for
14911 refunds of contributions under Subsections 35A-4-205(1)(a) and 35A-4-306(5).
14912 (ii) The department shall from time to time requisition from the unemployment trust
14913 fund amounts, not exceeding the amounts standing to this state's account in the fund, as it
14914 considers necessary for the payment of those benefits and refunds for a reasonable future
14915 period.
14916 (iii) (A) Upon receipt the treasurer shall deposit the money in the benefit account and
14917 shall pay benefits and refunds from the account by means of warrants issued by the division in
14918 accordance with rules prescribed by the department.
14919 (B) Expenditures of these money in the benefit account and refunds from the clearing
14920 account are not subject to any provisions of law requiring specific appropriations or other
14921 formal release by state officers of money in their custody.
14922 (b) Money in the state's account in the unemployment trust fund that were collected
14923 under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to the state
14924 under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended may be
14925 requisitioned from the state's account and used in the payment of expenses incurred by the
14926 department for the administration of the state's unemployment law and public employment
14927 offices, if the expenses are incurred and the withdrawals are made only after and under a
14928 specific appropriation of the Legislature that specifies:
14929 (i) the purposes and amounts;
14930 (ii) that the money may not be obligated after the two-year period that began on the
14931 date of the enactment of the appropriation law; and
14932 (iii) that the total amount which may be used during a fiscal year [~~shall not~~] <u>may not</u>
14933 exceed the amount by which the aggregate of the amounts credited to this state's account under

14934 Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal
14935 year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state
14936 for administration during the same 35 fiscal years.
14937 (A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall
14938 be charged against equivalent amounts that were first credited and that have not previously
14939 been so charged. An amount used during any fiscal year may not be charged against any
14940 amount credited during a fiscal year earlier than the 34th preceding fiscal year.
14941 (B) Except as appropriated and used for administrative expenses, as provided in this
14942 section, money transferred to this state under Section 903 of the Social Security Act as
14943 amended, may be used only for the payment of benefits.
14944 (C) Any money used for the payment of benefits may be restored for appropriation and
14945 use for administrative expenses, upon request of the governor, under Section 903(c) of the
14946 Social Security Act.
14947 (D) The division shall maintain a separate record of the deposit, obligation,
14948 expenditure, and return of funds deposited.
14949 (E) Money deposited shall, until expended, remain a part of the unemployment fund
14950 and, if not expended, shall be returned promptly to the account of this state in the
14951 unemployment trust fund.
14952 (F) The money available by reason of this legislative appropriation [~~shall not~~] may not
14953 be expended or available for expenditure in any manner that would permit their substitution
14954 for, or a corresponding reduction in, federal funds that would in the absence of the money be
14955 available to finance expenditures for the administration of this chapter.
14956 (c) Any balance of money requisitioned from the unemployment trust fund that remains
14957 unclaimed or unpaid in the benefit account after the expiration of the period for which the sums
14958 were requisitioned shall either be deducted from estimates for, and may be utilized for the
14959 payment of, benefits and refunds during succeeding periods, or in the discretion of the division,
14960 shall be redeposited with the secretary of the treasury of the United States of America to the
14961 credit of the state's account in the unemployment trust fund, as provided in Subsection (2).
14962 (4) (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to
14963 the unemployment trust fund, shall be operative only so long as the unemployment trust fund
14964 continues to exist and so long as the secretary of the treasury of the United States of America

14965 continues to maintain for the state a separate book account of all money deposited in the fund
14966 by the state for benefit purposes, together with the state's proportionate share of the earnings of
14967 the unemployment trust fund, from which no other state is permitted to make withdrawals.
14968 (b) (i) When the unemployment trust fund ceases to exist, or the separate book account
14969 is no longer maintained, all money belonging to the unemployment compensation fund of the
14970 state shall be administered by the division as a trust fund for the purpose of paying benefits
14971 under this chapter, and the division shall have authority to hold, invest, transfer, sell, deposit,
14972 and release the money, and any properties, securities, or earnings acquired as an incident to the
14973 administration.
14974 (ii) The money shall be invested in readily marketable bonds or other interest-bearing
14975 obligations of the United States of America, of the state, or of any county, city, town, or school
14976 district of the state, at current market prices for the bonds.
14977 (iii) The investment shall be made so that all the assets of the fund shall always be
14978 readily convertible into cash when needed for the payment of benefits.
14979 Section 342. Section **35A-4-506** is amended to read:
14980 **35A-4-506. Special Administrative Account.**
14981 (1) There is created a restricted account within the General Fund known as the "Special
14982 Administrative Expense Account."
14983 (2) (a) Interest and penalties collected under this chapter, less refunds made under
14984 Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of
14985 the restricted account at the end of each calendar month.
14986 (b) A contribution to the restricted account and any other money received for that
14987 purpose shall be paid into the restricted account.
14988 (c) The money may not be expended in any manner that would permit their substitution
14989 for, or a corresponding reduction in, federal funds that would in the absence of the money be
14990 available to finance expenditures for the administration of this chapter.
14991 (3) Nothing in this section shall prevent the money from being used as a revolving fund
14992 to cover expenditures, necessary and proper under this chapter, for which federal funds have
14993 been duly requested but not yet received subject to the charging of those expenditures against
14994 the funds when received.
14995 (4) Money in the restricted account shall be deposited, administered, and dispersed in

14996 accordance with the directions of the Legislature.
14997 (5) Money in the restricted account is made available to replace, within a reasonable
14998 time, any money received by this state under Section 302 of the Federal Social Security Act, 42
14999 U.S.C. 502, as amended, that because of any action of contingency have been lost or have been
15000 expended for purposes other than or in amounts in excess of those necessary for the proper
15001 administration of this chapter.
15002 (6) Money in the restricted account shall be available to the division for expenditure in
15003 accordance with this section and [~~shall not~~] may not lapse at any time or be transferred to any
15004 other fund or account except as directed by the Legislature.
15005 (7) The state treasurer shall pay all warrants drawn upon it by the division or its duly
15006 authorized agent in accordance with such rules as the department shall prescribe.
15007 (8) (a) The state treasurer shall be liable on the state treasurer's official bond for the
15008 faithful performance of the treasurer's duties in connection with the Special Administrative
15009 Expense Account provided for under this chapter.
15010 (b) Liability on the official bond shall exist in addition to any liability upon any
15011 separate bond existent on the effective date of this provision or that may be given in the future.
15012 (c) Any money recovered on any surety bond losses sustained by the Special
15013 Administrative Expense Account shall be deposited in the restricted account or in the General
15014 Fund if so directed by the Legislature.
15015 Section 343. **Effective date.**
15016 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 10,
15017 2011.
15018 (2) The amendments to the following sections take effect on July 1, 2011:
15019 (a) Section 32B-1-407 (Effective 07/01/11);
15020 (b) Section 32B-1-505 (Effective 07/01/11);
15021 (c) Section 32B-6-407 (Effective 07/01/11); and
15022 (d) Section 32B-8-304 (Effective 07/01/11).
15023 (3) The amendments to Section 20A-7-702 (Effective 01/01/12) take effect on January
15024 1, 2012.

Legislative Review Note
as of 1-7-11 1:51 PM

Office of Legislative Research and General Counsel