

# HB0326S01 compared with HB0326

~~{deleted text}~~ shows text that was in HB0326 but was deleted in HB0326S01.

inserted text shows text that was not in HB0326 but was inserted into HB0326S01.

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Representative LaVar Christensen proposes the following substitute bill:

## TRUST DEED FORECLOSURE CHANGES

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies provisions relating to the foreclosure of trust deeds.

#### Highlighted Provisions:

This bill:

- ▶ modifies ~~{successor trustee provisions;~~
- ▶ ~~requires successor lenders to record a notice of acquisition of beneficial interest;~~ a provision relating to the filing of a substitution of trustee;
- ▶ modifies notice of default provisions;
- ▶ ~~{requires trustees to mail a notice of default to the trustor;~~
- ▶ ~~provides for additional information to be included in a notice of default;~~
- ▶ ~~allows a trustor to request mediation;~~ establishes a procedure for deferring a trustee's sale following a notice of default~~;~~

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- provides for a tolling of the period required before a notice of sale if the trustor makes a monthly payment;
- modifies a provision relating to reinstatement or payoff statements; and allowing a lender and borrower to negotiate the terms of the loan if a trustor meets certain requirements, including paying a regular payment each month; and
  - ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**57-1-22**, as last amended by Laws of Utah 2002, Chapter 209

**57-1-24**, as last amended by Laws of Utah 2001, Chapter 236

~~{57-1-31.5}~~ **631-1-257**, as ~~{last amended}~~ enacted by Laws of Utah 2010, Chapter ~~{24}~~ 66

#### ENACTS:

~~{~~ ~~**57-1-22.5**, Utah Code Annotated 1953~~

~~}~~ **57-1-24.5**, Utah Code Annotated 1953

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

Section 1. Section **57-1-22** is amended to read:

**57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.**

(1) (a) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee.

(b) The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(c) The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the

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substitution of trustee.

(2) The substitution shall:

(a) identify the trust deed by stating:

- (i) the names of the original parties to the trust deed;
- (ii) the date of recordation; and
- (iii) (A) the book and page where the trust deed is recorded; or

(B) the entry number;

(b) include the legal description of the trust property;

(c) state the name and address of the new trustee; ~~{}~~and~~{}~~

(d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest~~{}, and~~

~~\_\_\_\_\_ (e) within 10 days after being executed, be submitted for recording to the office of the recorder of the county in which the trust property is located.~~

~~};~~

(3) (a) If not previously recorded~~{ because the 10-day period under Subsection (2)(e) has not lapsed}[,]~~ at the time of recording a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee.

(b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to any:

(i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and

(ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26(3).

(4) A substitution of trustee shall be in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by \_\_\_\_\_ as trustor, in which \_\_\_\_\_ is named beneficiary and \_\_\_\_\_ as trustee, and filed for record \_\_\_\_\_(month\day\year), and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Records of \_\_\_\_\_ County, (or filed for record \_\_\_\_\_(month\day\year), with recorder's entry No. \_\_\_\_\_, \_\_\_\_\_

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County), Utah.

(Insert legal description)

Signature \_\_\_\_\_

(Certificate of Acknowledgment)

Section 2. Section ~~{57-1-22.5}~~ 57-1-24 is ~~{enacted to read:~~

~~\_\_\_\_\_ 57-1-22.5. Successor lenders -- Notice of acquisition of beneficial interest.~~

~~\_\_\_\_\_ (1) As used in this section:~~

~~\_\_\_\_\_ (a) "Loan" has the same meaning as defined in Section 57-1-24.5.~~

~~\_\_\_\_\_ (b) "Owner-occupied property" has the same meaning as defined in Section 57-1-24.5.~~

~~\_\_\_\_\_ (c) "Successor lender" has the same meaning as defined in Section 57-1-24.5.~~

~~\_\_\_\_\_ (2) No later than 10 days after acquiring a beneficial interest under a trust deed secured by owner-occupied property, a successor lender shall file for recording in the office of the recorder in which the trust property is located a notice of acquisition of beneficial interest.~~

~~\_\_\_\_\_ (3) A successor lender who fails to comply with Subsection (2) may not collect costs or attorney fees in any judicial or nonjudicial foreclosure proceeding on the trust deed securing the loan.~~

~~\_\_\_\_\_ (4) A notice under Subsection (2) shall include:~~

~~\_\_\_\_\_ (a) the name, address, telephone number, and email address of the successor lender; and~~

~~\_\_\_\_\_ (b) the name and contact information, including mailing address, telephone number, and email address, of a person with authority to represent the successor lender for all purposes relating to the loan.~~

~~\_\_\_\_\_ Section 3. Section 57-1-24 is amended to read:~~

~~{~~ amended to read:

**57-1-24. Sale of trust property by trustee -- Notice of default.**

[The power of sale conferred upon the] ~~{(1)}~~ A trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not [be exercised] exercise the power of sale conferred as provided in Section 57-1-23 until after:

~~{(1)}~~ ~~{(a)}~~ the trustee [first] files for record, in the office of the recorder of each county where the trust property or some part or parcel of the trust property is situated, a notice of default[; identifying] that:

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~~(fii)a~~ identifies the trust deed by stating the name of the trustor named in the trust deed and giving the book and page, or the recorder's entry number, where the trust deed is recorded and a legal description of the trust property~~[-and containing]~~;

~~(fiii)b~~ contains a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of that breach ~~[and of]~~;

~~(fiii)c~~ states the trustee's election to sell the property or cause ~~[to be sold]~~ the property to be sold to satisfy the obligation; and

~~[(2) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and]~~

~~(fiv)d~~ complies with the requirements of ~~{Subsection}~~ Section 57-1-24.5 ~~{(2)}~~, if the trust property is owner-occupied property, as defined in Section 57-1-24.5; and

~~[(3) (fb)2] [after the lapse of at least three months] the trustee [shall give] gives~~ notice of sale, as provided in Sections 57-1-25 and 57-1-26, following the lapse of at least three months from the time the trustee files a notice of default for record under Subsection (1)(a), subject to ~~{Subsections}~~ Section 57-1-24.5 ~~{(3) and (4)}~~;

~~—— (2) Within three business days after filing a notice of default for recording under Subsection (1)(a) for a property that is owner-occupied property, as defined in Section 57-1-24.5, a trustee shall send, by certified mail, a copy of the notice of default to the trustor at the address of the trust property.~~

Section ~~{4}~~ 3. Section 57-1-24.5 is enacted to read:

57-1-24.5. ~~{~~ Additional requirements for notice of default -- Mediation -- Tolling of period before notice of sale; Notice to default trustor -- Right to negotiate alternative to foreclosure -- Requirements -- Deferment.

(1) As used in this section:

~~{~~ ~~—— (a) "Default beneficiary" means a lender or successor lender who owns some or all of the beneficial interest under a trust deed secured by owner-occupied property at the time that a notice of default is given under Section 57-1-24.~~

~~{~~ ~~(fb)a~~ "Default trustor" means a trustor under a trust deed secured by owner-occupied property that is the subject of a notice of default under Section 57-1-24.

~~(b) "Deferment period" means the period of tolling under Subsection (4)(a).~~

~~(c) "Lender" means a person who ~~{loans money for which}~~ is:~~

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(i) a beneficiary under a trust deed ~~for~~ secured by owner-occupied property ~~is given as security~~ that is the subject of a notice of default under Section 57-1-24; and

(ii) entitled to direct the trustee to sell the property following a default under the loan.

(d) "Loan" means the obligation for which a trust deed ~~on owner-occupied property~~ is given as security.

(e) "Owner-occupied property" means real property that is occupied by its owner as the owner's primary residence.

~~(f) "Successor lender" means a person who succeeds to the interest of the lender, including a person who succeeds to a partial interest.~~

~~(2) A~~2) (a) No later than 15 days after a trustee files for recording a notice of default under ~~Subsection~~ Section 57-1-24~~(1)~~ for a trust property that is an owner-occupied property shall include:

~~(a) information sufficient to enable~~, the trustee shall send a notice to the default trustor ~~to contact~~ by certified mail.

(b) A notice under Subsection (2)(a) shall include:

(i) the name, address, telephone number, and email address of an individual with authority to:

(A) negotiate on behalf of the ~~lender or successor~~ lender with respect to all aspects of the loan, including regarding foreclosure relief, a loan modification or ~~forebearance; and~~

~~(b) a plain and simple explanation of~~ forebearance, or any other reasonable alternative to foreclosure; and

(B) bind the lender to an agreement with the default ~~trustor's rights under this section.~~

~~(3) (a) A~~ trustor under terms that differ from the terms of the loan;

(ii) the name, address, telephone number, and email address of an individual representing the lender whom the default trustor ~~may elect to enter into mediation with the lender or successor~~ is required to contact under Subsection (3)(a) to request to negotiate with the lender as provided in this ~~Subsection (3) for the purpose of negotiating a modification of~~ section;

(iii) a description of the deferment opportunity under this section and the requirements and procedure for obtaining a deferment;

(iv) the date by which the default trustor is required to contact the lender to request to

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enter into negotiations as provided in this section:

(v) the Internet address of the United States Department of Housing and Urban Development web site identifying approved housing counseling agencies in the state; and

(vi) provide information regarding the availability of the federal government's Making Home Affordable program and the rights and benefits available to the default trustor under the program.

(3) (a) Subject to Subsections (3)(d) and (e), a lender shall make itself available for and cooperate in negotiations with a default trustor regarding the terms of the loan, including regarding foreclosure relief, a loan modification or forbearance, or any other mutually acceptable reasonable alternative to foreclosure, if:

(i) within 20 days after the trustee sends notice under Subsection (2), the default trustor contacts the lender to request negotiations regarding the loan;

(ii) the default trustor:

(A) occupied the trust property as the trustor's primary residence at the time the notice of default was recorded and during the 90-day period immediately before the notice of default was recorded;

(B) intends to continue to reside at the trust property; and

(C) is personally obligated on the loan; and

(iii) the loan:

(A) was incurred for primarily personal, family, or household purposes; and

(B) is secured by a trust deed on the trust property that is the subject of the notice of default.

(b) A default trustor ~~{who elects to enter into mediation}~~ may contact a lender under Subsection (3)(a) ~~{shall send written notification to the trustee and the lender or successor lender by certified mail within 45 days after the notice of default is recorded}~~ by telephone, mail, electronically, or in person.

(c) A default trustor ~~{who fails to mail written notification under Subsection (3)(a)}~~ within the time specified is considered to have waived mediation.

~~—— (d) A default trustor may waive mediation by giving the trustee written notification of the trustor's election to waive mediation.~~

~~—— (e) If a default trustor elects to enter into mediation} is ineligible to request the lender~~

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to negotiate regarding the loan or to a deferment as provided in this ~~Subsection (3):~~

~~— (i) mediation;~~ section if the default trustor:

(i) abandons the trust property;

(ii) has been discharged within the preceding 12 months in a Chapter 7 bankruptcy in which the trust property was property of the bankruptcy estate;

(iii) has been discharged within the preceding 12 months in a Chapter 13 bankruptcy with a modified loan agreement for which the trust property is security; or

(iv) previously received a foreclosure deferment under this section with respect to the same loan, including any modification of the loan.

(d) In negotiating with the default trustor under this section and determining whether to agree to an alternative to foreclosure, a lender shall:

(i) consider the default trustor's household expenses and gross monthly income, the nature of the loan, any written loan modification agreement between the default trustor and the lender ~~for successor lender shall be held as provided in Title 78B, Chapter 10, Utah Uniform Mediation Act;~~

~~— (ii) that was executed during the preceding 12 months, and any other relevant factors;~~

(ii) apply an analysis that is consistent with the net present value test set out in the Federal Deposit Insurance Corporation Loan Modification Program guidelines, effective October 2008, designed to indicate:

(A) what the default trustor ~~and the lender or successor lender shall attend and participate in good faith in the mediation;~~

~~— (iii) the lender or successor lender shall consider in good faith all reasonably available options to foreclosure;~~

~~— (iv) the three-month period described in Subsection 57-1-24(1)(b) is tolled from the date;~~ is able to pay on a sustainable basis for monthly housing expenses, including principal, interest, taxes, insurance, and any applicable homeowner association dues; and

(B) whether the lender would be likely to be paid more from the modification necessary to achieve a monthly payment that the default trustor ~~mails the notification;~~ is able to pay, as determined under Subsection (3) ~~(b) electing to enter into mediation until the date the mediation is concluded; and~~

~~— (v) unless;~~ d)(ii)(A), than the lender would be likely to be paid from a completed



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### foreclosure:

(iii) make available to the default trustor the full rights and {lender or successor lender otherwise agree:

~~—— (A) half of the cost of mediation shall be paid by}~~ benefits of the federal government's Making Home Affordable program, to the extent the program applies; and

(iv) give reasonable consideration to how long the default trustor {and half of the cost of mediation shall be paid by the lender or successor lender; and

~~—— (B) the cost of mediation may not exceed \$600.~~

~~—— (f) A mediation under this Subsection (3) may be conducted by teleconference, video conference, or other electronic means that allows each participant to hear all other participants, except during negotiation between the mediator and one of the parties as part of the mediation process:~~

~~—— (g) In a mediation under this Subsection (3), a lender or successor lender shall:~~

~~—— (i) provide}~~ has lived at the trust property, the default trustor's payment history over the life of the loan before the default, the circumstances, including any hardship, that led to the default trustor's inability to meet the obligations of the loan, the reasonable likelihood that those circumstances would be substantially improved if the default trustor ~~{a copy of the trust deed and trust deed loan with respect to which the notice of default was filed; and~~

~~—— (ii) be represented at mediation by someone who:~~

~~—— (A) has authority to negotiate a loan modification and foreclosure relief on behalf of the lender or successor lender; or~~

~~—— (B) is able to be in immediate communication with someone who has authority to negotiate a loan modification and}~~ were given foreclosure relief ~~{on behalf of the lender or successor lender.~~

~~—— (h) (i) If a lender or successor lender fails to attend mediation, fails to provide the documents required by Subsection (3)(g)(i), or fails to be represented at mediation as required by Subsection (3)(g)(ii), the district court for the county in which the trust property is located may enter an order, pursuant}~~ or a loan modification, and any other equitable factors relevant to the default trustor's {petition, requiring a loan modification or a stay of foreclosure as the court determines proper.

~~—— (ii) If a}~~ circumstances.

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~~(e) A lender and default trustor {fails to attend mediation, the mediation is considered concluded for purposes of this section:~~

~~(4) (a) A default trustor's payment, after a notice of default is recorded, shall participate in and conduct negotiations under this section consistent with the implied covenant of good faith and fair dealing that applies under the loan.~~

~~(4) (a) The three-month period required to lapse under Section 57-1-24{, of,} before a trustee may give notice of sale is tolled from the date that a default trustor contacts the lender under Subsection (3)(a)(i) until 90 days after that date, unless earlier terminated under Subsection (4)(b), if:~~

~~(i) the default trustor contacts the lender as provided in Subsection (3)(a)(i);~~

~~(ii) the default trustor meets the criteria of Subsection (3)(a)(ii);~~

~~(iii) the loan meets the criteria of Subsection (3)(a)(iii);~~

~~(iv) the default trustor is not ineligible under Subsection (3)(c);~~

~~(v) within 10 days after contacting the lender as provided in Subsection (3)(a)(i), the default trustor pays to the lender the amount of a regular monthly payment under the loan; and~~

~~(vi) the default trustor pays to the lender the amount of a regular monthly payment under the loan {tolls the three-month period described in Subsection 57-1-24(1)(b) for one month.~~

~~(b) The cumulative tolling, within each 30-day period following a payment under Subsection (4)(a)(v).~~

~~(b) A default trustor may make a payment under Subsection (4)(a)(v) or (vi) electronically or by certified funds delivered by a method that provides evidence of the date of payment.~~

~~(c) A deferment period under Subsection (4)(a) {may not exceed six months, unless the lender or successor lender agrees to a longer period.~~

~~Section 5. Section 57-1-31.5} terminates if:~~

~~(i) the default trustor abandons the trust property;~~

~~(ii) the default trustor fails to comply with the conditions of foreclosure deferment, including a failure to make a payment as required under Subsection (4)(a)(v) or (vi);~~

~~(iii) the default trustor conveys, transfers, or further encumbers the trust property in violation of the trust deed;~~

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(iv) a person holding another lien on the trust property has initiated foreclosure;

(v) the default trustor files for bankruptcy during the deferment period; or

(vi) the negotiations between the lender and the default trustor are concluded.

(d) A lender's acceptance of a payment under Subsection (4)(a)(v) or (vi) does not constitute a waiver of default or a modification of any amount due on the loan or of any other right the lender has under the loan.

Section 4. Section 63I-1-257 is amended to read:

~~{57-1-31.5. Reinstatement or payoff statement -- Timeliness of request --~~

~~Trustee's duty to provide statement -- Statement to include accounting of costs and fees.~~

~~(1) As used in this section:~~

~~(a) "Approved delivery method" means delivery by:~~

~~(i) certified or registered United States mail with return receipt requested; or~~

~~(ii) a nationally recognized letter or package delivery or courier service operating in the state that provides a service for:~~

~~(A) tracking the delivery of an item; or~~

~~(B) documenting;~~

~~(F) that the item was received by the intended recipient; or~~

~~(H) a refusal to accept delivery of the item.~~

~~(b) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a trustee for or in consideration of:~~

~~(i) services;~~

~~(ii) personal or real property; or~~

~~(iii) other thing of value.~~

~~(c) "Interested party" means a person with a right under Subsection 57-1-31(1) to reinstate an obligation secured by a trust deed.~~

~~(d) "Payoff statement" means a statement under Subsection (2) that an interested party requests in order to obtain the amount required to pay off a loan secured by a trust deed.~~

~~(e) "Reinstatement statement" means a statement under Subsection (2) that an interested party requests in order to obtain the amount required under Subsection 57-1-31(1) to reinstate an obligation secured by a trust deed.~~

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- ~~—— (2) (a) (i) An interested party may submit a written request to [a] the trustee of record for a statement of the amount required to be paid:~~
- ~~—— (A) to reinstate an obligation secured by a trust deed; or~~
- ~~—— (B) to pay off a loan secured by a trust deed.~~
- ~~—— (ii) (A) A request for a reinstatement statement is not timely unless the trustee receives the request at least 10 business days before expiration of the three-month period under Section 57-1-31 to reinstate an obligation.~~
- ~~—— (B) A request for a payoff statement is not timely unless the trustee receives the request at least 10 business days before the trustee's sale.~~
- ~~—— (iii) An interested party submitting a reinstatement statement or payoff statement to a trustee shall submit the statement to the trustee:~~
- ~~—— (A) at the address specified in the trust deed for notices to the trustee; or~~
- ~~—— (B) at an alternate address approved by the trustee for delivery of mail or notices.~~
- ~~—— (iv) A trustee is considered to have received a request submitted under Subsection (2)(a)(i) if:~~
- ~~—— (A) the interested party submitted the request through an approved delivery method; and~~
- ~~—— (B) documentation provided under the approved delivery method indicates that:~~
- ~~—— (I) the request was delivered to the trustee; or~~
- ~~—— (II) delivery of the request was refused.~~
- ~~—— (b) (i) A trustee who receives a written request under Subsection (2)(a) shall provide the statement to the interested party.~~
- ~~—— (ii) A trustee is considered to have provided the statement requested under Subsection (2)(a) on the date that the trustee deposits the statement with an approved delivery method:~~
- ~~—— (A) with all delivery costs prepaid; and~~
- ~~—— (B) addressed to the interested party at the address provided in the request.~~
- ~~—— (c) (i) If the trustee provides a requested reinstatement statement later than five business days after the request is received, the time to reinstate under Section 57-1-31 is tolled from the date of the request to the date that the trustee provides the statement.~~
- ~~—— (ii) If, after scheduling a trustee's sale, the trustee fails to provide a requested~~

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~~payoff statement within five business days after the request is received, the trustee shall:~~

~~—— (A) cancel the trustee's sale; or~~

~~—— (B) postpone the trustee's sale to a date at least 10 business days after the trustee provides the statement.~~

~~—— (3) A trustee shall include with each statement required under Subsection (2)(a):~~

~~—— (a) a detailed listing of any of the following that the trustor would be required to pay to reinstate or payoff the loan:~~

~~—— (i) attorney fees;~~

~~—— (ii) trustee fees; or~~

~~—— (iii) any costs including:~~

~~—— (A) title fees;~~

~~—— (B) publication fees; or~~

~~—— (C) posting fees; and~~

~~—— (b) subject to Subsection (4), a disclosure of:~~

~~—— (i) any relationship that the trustee has with a third party that provides services related to the foreclosure of the loan; and~~

~~—— (ii) whether the relationship described in Subsection (3)(b)(i) is created by:~~

~~—— (A) an ownership interest in the third party; or~~

~~—— (B) contract or other agreement.~~

~~—— (4) Subsection (3)(b) does not require a trustee to provide a trustor:~~

~~—— (a) a copy of any contract or agreement described in Subsection (3)(b);~~

~~—— (b) specific detail as to the nature of the ownership interest described in Subsection (3)(b); or~~

~~—— (c) the amount of compensation the trustee receives related to the foreclosure of the loan under a relationship described in Subsection (3)(b).~~

**Legislative Review Note**

~~—— as of 2-14-11 6:15 AM~~

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~~Office of Legislative Research and General Counsel~~; 63I-1-257. Repeal dates, Title 57.

(1) Section 57-1-24.5 is repealed December 31, 2013.

(2) Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2012.