

MARRIAGE REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes technical corrections throughout the code to the terms husband and wife.

Highlighted Provisions:

This bill:

- changes the terms husband and wife throughout the code to "spouse" or "married couple" as needed to retain the meaning of the statute;
- renames Title 30 of the Utah Code to "Domestic Relations"; and
- makes other technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-10a-724, as enacted by Laws of Utah 1992, Chapter 277

30-1-1, as last amended by Laws of Utah 1996, Chapter 83

30-1-2, as last amended by Laws of Utah 1999, Chapter 15

30-1-4, as last amended by Laws of Utah 1996, Chapter 83

30-1-4.5, as last amended by Laws of Utah 2011, Chapter 297



28 **30-1-8**, as last amended by Laws of Utah 2004, Chapter 261
29 **30-1-9**, as last amended by Laws of Utah 2000, Chapter 1
30 **30-3-1**, as last amended by Laws of Utah 1997, Chapter 47
31 **30-3-5**, as last amended by Laws of Utah 2013, Chapters 264 and 373
32 **30-3-10**, as last amended by Laws of Utah 2014, Chapter 409
33 **30-4-2**, as last amended by Laws of Utah 1977, Chapter 122
34 **30-4-3**, as last amended by Laws of Utah 1991, Chapter 257
35 **30-4-5**, as last amended by Laws of Utah 1977, Chapter 122
36 **39-1-35**, as last amended by Laws of Utah 1981, Chapter 174
37 **53-7-302**, as last amended by Laws of Utah 2012, Chapter 373
38 **53A-1a-518**, as last amended by Laws of Utah 2010, Chapter 162
39 **53B-8a-106**, as last amended by Laws of Utah 2015, Chapter 94
40 **57-1-5**, as last amended by Laws of Utah 2011, Chapter 88
41 **57-1-25**, as last amended by Laws of Utah 2011, Chapter 228
42 **59-1-1404**, as enacted by Laws of Utah 2009, Chapter 212
43 **59-2-1109**, as last amended by Laws of Utah 2013, Chapters 19 and 278
44 **59-10-119**, as last amended by Laws of Utah 2008, Chapter 389
45 **59-10-503**, as last amended by Laws of Utah 2010, Chapter 324
46 **59-10-1017**, as last amended by Laws of Utah 2015, Chapter 94
47 **59-10-1018**, as last amended by Laws of Utah 2012, Chapter 295
48 **59-10-1021**, as enacted by Laws of Utah 2008, Chapter 389
49 **59-10-1023**, as enacted by Laws of Utah 2008, Chapter 389
50 **59-10-1303**, as last amended by Laws of Utah 2009, Chapter 251
51 **59-10-1313**, as last amended by Laws of Utah 2015, Chapter 94
52 **62A-1-120**, as last amended by Laws of Utah 2014, Chapter 387
53 **62A-11-111**, as last amended by Laws of Utah 2011, Chapter 366
54 **75-2-802**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
55 **75-2-804**, as last amended by Laws of Utah 2013, Chapter 264
56 **76-2-302**, as enacted by Laws of Utah 1973, Chapter 196
57 **76-6-516**, as enacted by Laws of Utah 1973, Chapter 196
58 **76-7-101**, as last amended by Laws of Utah 1997, Chapter 296

59 **77-1-6**, as enacted by Laws of Utah 1980, Chapter 15
60 **78B-1-137**, as renumbered and amended by Laws of Utah 2008, Chapter 3
61 **78B-3-101**, as enacted by Laws of Utah 2008, Chapter 3
62 **78B-5-504**, as renumbered and amended by Laws of Utah 2008, Chapter 3
63 **78B-6-114**, as renumbered and amended by Laws of Utah 2008, Chapter 3
64 **78B-12-115**, as renumbered and amended by Laws of Utah 2008, Chapter 3
65 **78B-13-310**, as renumbered and amended by Laws of Utah 2008, Chapter 3
66 **78B-14-316**, as last amended by Laws of Utah 2015, Chapter 45

67 REPEALS:

68 **30-1-4.1**, as enacted by Laws of Utah 2004, Chapter 261
69 **30-3-2**, Utah Code Annotated 1953

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

72 Section 1. Section **16-10a-724** is amended to read:

73 **16-10a-724. Corporation's acceptance of votes.**

74 (1) If the name signed on a vote, consent, waiver, proxy appointment, or proxy
75 appointment revocation corresponds to the name of a shareholder, the corporation, if acting in
76 good faith, is entitled to accept the vote, consent, waiver, proxy appointment, or proxy
77 appointment revocation and give it effect as the act of the shareholder.

78 (2) If the name signed on a vote, consent, waiver, proxy appointment, or proxy
79 appointment revocation does not correspond to the name of a shareholder, the corporation, if
80 acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy
81 appointment, or proxy appointment revocation and give it effect as the act of the shareholder if:

82 (a) the shareholder is an entity and the name signed purports to be that of an officer or
83 agent of the entity;

84 (b) the name signed purports to be that of an administrator, executor, guardian, or
85 conservator representing the shareholder and, if the corporation requests, evidence of fiduciary
86 status acceptable to the corporation has been presented with respect to the vote, consent,
87 waiver, proxy appointment, or proxy appointment revocation;

88 (c) the name signed purports to be that of a receiver or trustee in bankruptcy of the
89 shareholder and, if the corporation requests, evidence of this status acceptable to the

corporation has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all cotenants or fiduciaries; or

(f) the acceptance of the vote, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with the provisions of this section.

(3) If shares are registered in the names of two or more persons, whether fiduciaries, members of a partnership, cotenants, husband and wife or other married spouses as community property, voting trustees, persons entitled to vote under a shareholder voting agreement or otherwise, or if two or more persons, including proxyholders, have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation or other officer or agent entitled to tabulate votes is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

(a) if only one votes, the act binds all;

(b) if more than one vote, the act of the majority so voting binds all;

(c) if more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately;

(d) if the instrument so filed or the registration of the shares shows that any tenancy is held in unequal interests, a majority or even split for the purpose of this section shall be a majority or even split in interest.

(4) The corporation is entitled to reject a vote, consent, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(5) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(6) Corporate action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

Section 2. Section **30-1-1** is amended to read:

TITLE 30. DOMESTIC RELATIONS

30-1-1. Incestuous marriages void.

(1) The following marriages are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate:

- (a) marriages between parents and children;
- (b) marriages between ancestors and descendants of every degree;
- (c) marriages between brothers and sisters of the half as well as the whole blood;
- (d) marriages between uncles [~~and~~], nieces [~~or~~], aunts [~~and~~], or nephews;
- (e) marriages between first cousins, except as provided in Subsection (2); or
- (f) marriages between any persons related to each other within and not including the fifth degree of consanguinity computed according to the rules of the civil law, except as provided in Subsection (2).

(2) First cousins may marry under the following circumstances:

- (a) both parties are 65 years of age or older; or
- (b) if both parties are 55 years of age or older, upon a finding by the district court, located in the district in which either party resides, that either party is unable to reproduce.

Section 3. Section **30-1-2** is amended to read:

30-1-2. Marriages prohibited and void.

The following marriages are prohibited and declared void:

- (1) when there is a husband or wife living, from whom the person marrying has not been divorced;
- (2) when [~~the male or female~~] either party is under 18 years of age unless consent is obtained as provided in Section **30-1-9**;

(3) when ~~[the male or female]~~ either party is under 14 years of age or, beginning May 3, 1999, when ~~[the male or female]~~ either party is under 16 years of age at the time the parties attempt to enter into the marriage; however, exceptions may be made for a person 15 years of age, under conditions set in accordance with Section 30-1-9; and

(4) between a divorced person and any person other than the one from whom the divorce was secured until the divorce decree becomes absolute, and, if an appeal is taken, until after the affirmance of the decree~~[-and]~~.

~~[(5) between persons of the same sex.]~~

Section 4. Section 30-1-4 is amended to read:

30-1-4. Validity of foreign marriages -- Exceptions.

A marriage solemnized in any other country, state, or territory, if valid where solemnized, is valid here, unless it is a marriage:

(1) that would be prohibited and declared void in this state, under Subsection 30-1-2(1)~~[-]~~ or (3)~~[-or (5)]~~; or

(2) between parties who are related to each other within and including three degrees of consanguinity, except as provided in Subsection 30-1-1(2).

Section 5. Section 30-1-4.5 is amended to read:

30-1-4.5. Validity of marriage not solemnized.

(1) A marriage ~~[which]~~ that is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between ~~[a man and a woman]~~ two persons who:

(a) are of legal age and capable of giving consent;

(b) are legally capable of entering a solemnized marriage under the provisions of this chapter;

(c) have cohabited;

(d) mutually assume marital rights, duties, and obligations; and

(e) ~~[who]~~ hold themselves out as and have acquired a uniform and general reputation as ~~[husband and wife]~~ married to each other.

(2) The determination or establishment of a marriage under this section shall occur during the relationship described in Subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be

manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Section 6. Section **30-1-8** is amended to read:

30-1-8. Application for license -- Contents.

(1) A marriage license may be issued by the county clerk [~~to a man and a woman~~] only after an application has been filed in [~~his~~] the county clerk's office, requiring the following information:

(a) the full names of [~~the man and the woman, including the maiden name of the woman~~] each party, including current and previous surnames, if applicable;

(b) the social security numbers of the parties, unless the party has not been assigned a number;

(c) the current address of each party;

(d) the date and place of birth (town or city, county, state or country, if possible);

(e) the names of their respective parents, including the maiden name of the mother, if applicable;

(f) the birthplaces of [~~fathers and mothers~~] parents (town or city, county, state or country, if possible); and

(g) the distinctive race or nationality of each of the parents.

(2) If [~~the~~] a woman is a widow, her maiden name shall be shown in brackets.

(3) If one or both of the parties is under 16 years of age, the clerk shall provide them with a standard petition on a form approved by the Judicial Council to be presented to the juvenile court to obtain the authorization required by Section **30-1-9**.

(4) (a) The social security numbers obtained under the authority of this section may not be recorded on the marriage license, and are not open to inspection as a part of the vital statistics files.

(b) The Department of Health, Bureau of Vital Records and Health Statistics shall, upon request, supply those social security numbers to the Office of Recovery Services within the Department of Human Services.

(c) The Office of Recovery Services may not use any social security numbers obtained under the authority of this section for any reason other than the administration of child support services.

Section 7. Section 30-1-9 is amended to read:

30-1-9. Marriage by minors -- Consent of parent or guardian -- Juvenile court authorization.

(1) For purposes of this section, "minor" means a male or female under 18 years of age.

(2) (a) If at the time of applying for a license the applicant is a minor, and not before married, a license may not be issued without the signed consent of the minor's father, mother, or guardian given in person to the clerk; however:

(i) if the parents of the minor are divorced, consent shall be given by the parent having legal custody of the minor as evidenced by an oath of affirmation to the clerk;

(ii) if the parents of the minor are divorced and have been awarded joint custody of the minor, consent shall be given by the parent having physical custody of the minor the majority of the time as evidenced by an oath of affirmation to the clerk; or

(iii) if the minor is not in the custody of a parent, the legal guardian shall provide the consent and provide proof of guardianship by court order as well as an oath of affirmation.

(b) If the [~~male or female~~] minor is 15 years of age, the minor and the parent or guardian of the minor shall obtain a written authorization to marry from:

(i) a judge of the court exercising juvenile jurisdiction in the county where either party to the marriage resides; or

(ii) a court commissioner as permitted by rule of the Judicial Council.

(3) (a) Before issuing written authorization for a minor to marry, the judge or court commissioner shall determine:

(i) that the minor is entering into the marriage voluntarily; and

(ii) the marriage is in the best interests of the minor under the circumstances.

(b) The judge or court commissioner shall require that both parties to the marriage complete premarital counseling. This requirement may be waived if premarital counseling is not reasonably available.

(c) The judge or court commissioner may require:

(i) that the person continue to attend school, unless excused under Section 53A-11-102; and

(ii) any other conditions that the court [~~deems~~] considers reasonable under the circumstances.

(4) The determination required in Subsection (3) shall be made on the record. Any inquiry conducted by the judge or commissioner may be conducted in chambers.

Section 8. Section **30-3-1** is amended to read:

30-3-1. Procedure -- Residence -- Grounds.

(1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter.

(2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action.

(3) Grounds for divorce:

- (a) impotency of the respondent at the time of marriage;
- (b) adultery committed by the respondent subsequent to marriage;
- (c) willful desertion of the petitioner by the respondent for more than one year;
- (d) willful neglect of the respondent to provide for the petitioner the common necessities of life;
- (e) habitual drunkenness of the respondent;
- (f) conviction of the respondent for a felony;
- (g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;
- (h) irreconcilable differences of the marriage;
- (i) incurable insanity; or
- (j) when the husband and wife or other married spouses have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

(4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless:

- (i) the respondent has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and

(ii) the court finds by the testimony of competent witnesses that the insanity of the respondent is incurable.

(b) The court shall appoint for the respondent a guardian ad litem who shall protect the interests of the respondent. A copy of the summons and complaint shall be served on the respondent in person or by publication, as provided by the laws of this state in other actions for divorce, or upon ~~his~~ the guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the respondent resides ~~out~~ outside of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the respondent and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, as the courts and judges possess in other actions for divorce.

(e) The petitioner or respondent may, if the respondent resides in this state, upon notice, have the respondent brought into the court at trial, or have an examination of the respondent by two or more competent physicians, to determine the mental condition of the respondent. For this purpose either party may have leave from the court to enter any asylum or institution where the respondent may be confined. The costs of court in this action shall be apportioned by the court.

Section 9. Section **30-3-5** is amended to read:

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Determination of alimony -- Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children including responsibility for health insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

(b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the

dependent children; and

(ii) a designation of which health, hospital, or dental insurance plan is primary and which health, hospital, or dental insurance plan is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both parents' health, hospital, or dental insurance plans;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders;

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services; and

(e) if either party owns a life insurance policy or an annuity contract, an acknowledgment by the court that the owner:

(i) has reviewed and updated, where appropriate, the list of beneficiaries;

(ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries after the divorce becomes final; and

(iii) understands that if no changes are made to the policy or contract, the beneficiaries currently listed will receive any funds paid by the insurance company under the terms of the policy or contract.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for

338 distribution of the property and obligations for debts as is reasonable and necessary.

339 (4) Child support, custody, visitation, and other matters related to children born to the
340 ~~[mother and father]~~ parties after entry of the decree of divorce may be added to the decree by
341 modification.

342 (5) (a) In determining parent-time rights of parents and visitation rights of grandparents
343 and other members of the immediate family, the court shall consider the best interest of the
344 child.

345 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
346 court may include in an order establishing a parent-time or visitation schedule a provision,
347 among other things, authorizing any peace officer to enforce a court-ordered parent-time or
348 visitation schedule entered under this chapter.

349 (6) If a petition for modification of child custody or parent-time provisions of a court
350 order is made and denied and the court determines that the petition was without merit and not
351 asserted or defended against in good faith, the court shall order the ~~[petitioner]~~ losing party to
352 pay the reasonable ~~[attorneys']~~ attorney fees expended by the prevailing party in that action~~[, if~~
353 ~~the court determines that the petition was without merit and not asserted or defended against in~~
354 ~~good faith]~~.

355 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a
356 visitation order by a grandparent or other member of the immediate family where a visitation or
357 parent-time right has been previously granted by the court, the court may award to the
358 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing
359 party because of the other party's failure to provide or exercise court-ordered visitation or
360 parent-time.

361 (8) (a) The court shall consider at least the following factors in determining alimony:

362 (i) the financial condition and needs of the recipient spouse;

363 (ii) the recipient's earning capacity or ability to produce income;

364 (iii) the ability of the payor spouse to provide support;

365 (iv) the length of the marriage;

366 (v) whether the recipient spouse has custody of minor children requiring support;

367 (vi) whether the recipient spouse worked in a business owned or operated by the payor
368 spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or enabling the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining whether to award alimony and the terms thereof.

(c) "Fault" means any of the following wrongful conduct during the marriage that substantially contributed to the breakup of the marriage relationship:

(i) engaging in sexual relations with a person other than the party's spouse;

(ii) knowingly and intentionally causing or attempting to cause physical harm to the other party or minor children;

(iii) knowingly and intentionally causing the other party or minor children to reasonably fear life-threatening harm; or

(iv) substantially undermining the financial stability of the other party or the minor children.

(d) The court may, when fault is at issue, close the proceedings and seal the court records.

(e) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(f) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(g) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(h) In determining alimony when a marriage of short duration dissolves, and no

children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(i) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(j) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and the payor party's rights are determined.

(10) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

Section 10. Section **30-3-10** is amended to read:

30-3-10. Custody of children in case of separation or divorce -- Custody consideration.

(1) If a husband and wife [having] or other married couple with minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

431 (a) In determining any form of custody, including a change in custody, the court shall
432 consider the best interests of the child without preference for either ~~[the mother or father]~~
433 parent solely because of the biological sex of the parent and, among other factors the court
434 finds relevant, the following:

- 435 (i) the past conduct and demonstrated moral standards of each of the parties;
- 436 (ii) which parent is most likely to act in the best interest of the child, including
437 allowing the child frequent and continuing contact with the noncustodial parent;
- 438 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
439 and nature of the relationship between a parent and child;
- 440 (iv) whether the parent has intentionally exposed the child to pornography or material
441 harmful to a minor, as defined in Section 76-10-1201; and
- 442 (v) those factors outlined in Section 30-3-10.2.

443 (b) There shall be a rebuttable presumption that joint legal custody, as defined in
444 Section 30-3-10.1, is in the best interest of the child, except in cases where there is:

- 445 (i) domestic violence in the home or in the presence of the child;
- 446 (ii) special physical or mental needs of a parent or child, making joint legal custody
447 unreasonable;
- 448 (iii) physical distance between the residences of the parents, making joint decision
449 making impractical in certain circumstances; or
- 450 (iv) any other factor the court considers relevant including those listed in this section
451 and Section 30-3-10.2.

452 (c) The person who desires joint legal custody shall file a proposed parenting plan in
453 accordance with Sections 30-3-10.8 and 30-3-10.9. A presumption for joint legal custody may
454 be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of
455 the child.

456 (d) The children may not be required by either party to testify unless the trier of fact
457 determines that extenuating circumstances exist that would necessitate the testimony of the
458 children be heard and there is no other reasonable method to present their testimony.

459 (e) The court may inquire of the children and take into consideration the children's
460 desires regarding future custody or parent-time schedules, but the expressed desires are not
461 controlling and the court may determine the children's custody or parent-time otherwise. The

desires of a child 14 years of age or older shall be given added weight, but is not the single controlling factor.

(f) If interviews with the children are conducted by the court pursuant to Subsection (1)(e), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding custody.

~~[(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.]~~

~~[(3)]~~ (2) If the court finds that one parent does not desire custody of the child, the court shall take that evidence into consideration in determining whether to award custody to the other parent.

~~[(4)]~~ (3) (a) Except as provided in Subsection ~~[(4)]~~ (3)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

~~[(5)]~~ (4) This section establishes neither a preference nor a presumption for or against joint physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

Section 11. Section **30-4-2** is amended to read:

30-4-2. Procedure -- Venue.

In all actions brought [~~hereunder~~] under this chapter the proceedings and practice shall be the same as [~~near as may be as~~] in actions for divorce; but the action may be brought in any county where [~~the wife or the husband~~] either party may be found.

Section 12. Section **30-4-3** is amended to read:

30-4-3. Custody and maintenance of children -- Property and debt division -- Support payments.

(1) In all actions brought under this chapter the court may by order or decree:

(a) provide for the care, custody, and maintenance of the minor children of the parties and may determine with which of the parties the children or any of them shall remain;

(b) (i) provide for support of either spouse and the support of the minor children remaining with that spouse;

(ii) provide how and when support payments shall be made; and

(iii) provide that either spouse have a lien upon the property of the other to secure payment of the support or maintenance obligation;

(c) award to either spouse the possession of any real or personal property of the other spouse or acquired by the spouses during the marriage; or

(d) pursuant to Section **15-4-6.5**:

(i) specify which party is responsible for the payment of joint debts, obligations, or liabilities contracted or incurred by the parties during the marriage;

(ii) require the parties to notify respective creditors or obligees regarding the court's division of debts, obligations, and liabilities and regarding the parties' separate, current addresses; and

(iii) provide for the enforcement of these orders.

(2) The orders and decrees under this section may be enforced by:

(a) the sale of any property of the spouse [~~or by~~];

(b) contempt proceedings; or [~~otherwise as may be~~]

(c) any other means necessary.

(3) The court may change the support or maintenance of a party from time to time according to the party's circumstances, and may terminate altogether any obligation upon

satisfactory proof of voluntary and permanent reconciliation. An order or decree of support or maintenance shall in every case be valid only during the joint lives of the ~~[husband and wife]~~ parties.

Section 13. Section **30-4-5** is amended to read:

30-4-5. Rights and remedies -- Imprisonment of spouse.

Like rights and remedies shall be extended to either husband or wife or other married spouse on the imprisonment of the other in the state prison under a sentence of one year or more when suitable provision has not been made for the support of the one not so imprisoned.

Section 14. Section **39-1-35** is amended to read:

39-1-35. State employees in National Guard -- Care of dependents when called into service.

If the National Guard of this state is called into the service of the state, the state shall provide for the dependents of state employees who are enlisted members of the National Guard so called into service. The Board of Examiners shall cause an examination to be made into the merits of all cases of alleged dependency, and upon finding that any mother, father, grandfather, grandmother, husband, wife, spouse, sister, brother, or child of ~~[such]~~ a member of the National Guard, or any or either of them, are dependent upon ~~[such]~~ the member for support, the Board of Examiners shall determine the amount to be paid by the state to any ~~[such]~~ dependent, and shall cause the state auditor to draw his warrant on the state treasurer for ~~[such]~~ a sum in favor of ~~[such]~~ any specific and determined dependents, payable out of any amounts available for military purposes or for the maintenance and support of the National Guard. If there are not sufficient funds available to pay for the necessary support of all the dependents determined and specified by the board of examiners, the funds available shall be prorated among the dependents specified by the Board of Examiners. The Board of Examiners in specifying the amounts to be paid to ~~[such]~~ dependents may provide for a payment on a weekly or monthly basis and on ~~[such]~~ conditions ~~[as it may deem]~~ the board considers best in each particular case.

Section 15. Section **53-7-302** is amended to read:

53-7-302. Definitions.

As used in this part:

(1) "Board" means the Liquefied Petroleum Gas Board created in Section **53-7-304**.

(2) "Container" means any vessel, including cylinders, tanks, portable tanks, and cargo tanks used for transporting or storing liquefied petroleum gases, except containers subject to regulation and inspection by the Department of Transportation and under federal laws or regulations.

(3) "Distributor" means any person engaged in the distribution of liquefied petroleum gas, either wholesale or retail, including a commercial carrier, as identified by the Department of Transportation or the Interstate Commerce Commission, who transports or hauls liquefied petroleum gas that is to be distributed or sold within this state.

(4) "Enforcing authority" means the division, the municipal or county fire department, another fire-prevention agency acting within its jurisdiction, or the building official of any city or county and his authorized representatives.

(5) "Final consumer" means an individual or business who is the ultimate user of LPG.

(6) "Gas appliance" means any device that uses liquefied petroleum gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

(7) "Installer" means any person who has satisfactorily passed an examination under the supervision of the board, testing his knowledge and ability to install or properly repair domestic systems, industrial systems, liquefied petroleum gas carburetion systems, bulk plant systems, standby plant systems, or other similar systems, and who holds an installer's certificate under this part.

(8) "Licensee" means a person licensed by the board to engage in the liquefied petroleum gas business.

(9) "Liquefied petroleum gas" means any material having a vapor pressure not exceeding that allowed for commercial propane and composed predominantly of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane, normal butane, or isobutane, and butylene, including isomers.

(10) "Liquefied petroleum gas carburetion system" means any carburetion system using liquefied petroleum gas as a fuel in a motor vehicle.

(11) "Liquefied petroleum gas fueling system" means an assembly consisting of compressors, containers, piping, and other delivery devices for the purpose of dispensing liquefied petroleum gas for use as a fuel in a motor vehicle.

(12) "LPG" means liquefied petroleum gas.

(13) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and includes:

(a) a husband, wife, or both, or other spouses or married couples where joint benefits are derived from the operation of a business or activity subject to this part; and

(b) any state, county, municipality, or other agency engaged in a business or activity subject to this part.

(14) "Red tag" means a card or device, red in color, containing printed notice of the condemnation of a liquefied petroleum gas system as a result of a violation of this part, or any rules or orders made by the board; the tag, when attached to the system, is official notice of condemnation and of the prohibition of further use, so long as the red tag remains lawfully affixed.

(15) "System" means an assembly consisting of one or more containers with a means for conveying LPG from the container or containers to dispensing or consuming devices, either continuously or intermittently, and that incorporates components intended to achieve control of quantity, flow, and pressure or state, either liquid or vapor.

Section 16. Section **53A-1a-518** is amended to read:

53A-1a-518. Regulated transactions and relationships -- Definitions -- Rulemaking.

(1) As used in this section:

(a) "Charter school officer" means:

(i) a member of a charter school's governing board;

(ii) a member of a board or an officer of a nonprofit corporation under which a charter school is organized and managed; or

(iii) the chief administrative officer of a charter school.

(b) (i) "Employment" means a position in which a person's salary, wages, pay, or compensation, whether as an employee or contractor, is paid from charter school funds.

(ii) "Employment" does not include a charter school volunteer.

(c) "Relative" means a father, mother, husband, wife, spouse, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(2) (a) Except as provided in Subsection (2)(b), a relative of a charter school officer

may not be employed at a charter school.

(b) If a relative of a charter school officer is to be considered for employment in a charter school, the charter school officer shall:

(i) disclose the relationship, in writing, to the other charter school officers;

(ii) submit the employment decision to the charter school's governing board for the approval, by majority vote, of the charter school's governing board;

(iii) abstain from voting on the issue; and

(iv) be absent from any meeting when the employment is being considered and determined.

(3) (a) Except as provided in Subsections (3)(b) and (3)(c), a charter school officer or a relative of a charter school officer may not have a financial interest in a contract or other transaction involving a charter school in which the charter school officer serves as a charter school officer.

(b) If a charter school's governing board considers entering into a contract or executing a transaction in which a charter school officer or a relative of a charter school officer has a financial interest, the charter school officer shall:

(i) disclose the financial interest, in writing, to the other charter school officers;

(ii) submit the contract or transaction decision to the charter school's governing board for the approval, by majority vote, of the charter school's governing board;

(iii) abstain from voting on the issue; and

(iv) be absent from any meeting when the contract or transaction is being considered and determined.

(c) The provisions in Subsection (3)(a) do not apply to a reasonable contract of employment for:

(i) the chief administrative officer of a charter school; or

(ii) a relative of the chief administrative officer of a charter school whose employment is approved in accordance with the provisions in Subsection (2).

(4) The State Board of Education or State Charter School Board may not operate a charter school.

Section 17. Section **53B-8a-106** is amended to read:

53B-8a-106. Account agreements.

648 The plan may enter into account agreements with account owners on behalf of
649 beneficiaries under the following terms and agreements:

650 (1) (a) An account agreement may require an account owner to agree to invest a
651 specific amount of money in the plan for a specific period of time for the benefit of a specific
652 beneficiary, not to exceed an amount determined by the executive director.

653 (b) Account agreements may be amended to provide for adjusted levels of payments
654 based upon changed circumstances or changes in educational plans.

655 (c) An account owner may make additional optional payments as long as the total
656 payments for a specific beneficiary do not exceed the total estimated higher education costs as
657 determined by the executive director.

658 (d) Subject to Subsections (1)(f) and (g), the maximum amount of a qualified
659 investment that a corporation that is an account owner may subtract from unadjusted income
660 for a taxable year in accordance with Title 59, Chapter 7, Corporate Franchise and Income
661 Taxes, is \$1,710 for each individual beneficiary for the taxable year beginning on or after
662 January 1, 2010, but beginning on or before December 31, 2010.

663 (e) Subject to Subsections (1)(f) and (g), the maximum amount of a qualified
664 investment that may be used as the basis for claiming a tax credit in accordance with Section
665 [59-10-1017](#), is:

666 (i) subject to Subsection (1)(e)(iv), for a resident or nonresident estate or trust that is an
667 account owner, \$1,710 for each individual beneficiary for the taxable year beginning on or after
668 January 1, 2010, but beginning on or before December 31, 2010;

669 (ii) subject to Subsection (1)(e)(iv), for a resident or nonresident individual that is an
670 account owner, other than a husband and wife or other married couple who are account owners
671 and file a single return jointly under Title 59, Chapter 10, Individual Income Tax Act, \$1,710
672 for each individual beneficiary for the taxable year beginning on or after January 1, 2010, but
673 beginning on or before December 31, 2010;

674 (iii) subject to Subsection (1)(e)(iv), for a husband and wife or other married couple
675 who are account owners and file a single return jointly under Title 59, Chapter 10, Individual
676 Income Tax Act, \$3,420 for each individual beneficiary:

677 (A) for the taxable year beginning on or after January 1, 2010, but beginning on or
678 before December 31, 2010; and

(B) regardless of whether the plan has entered into:

(I) a separate account agreement with each spouse; or

(II) a single account agreement with both spouses jointly; or

(iv) for a grantor trust:

(A) if the owner of the grantor trust has a single filing status or head of household filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(e)(ii); or

(B) if the owner of the grantor trust has a joint filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(e)(iii).

(f) (i) For taxable years beginning on or after January 1, 2011, the executive director shall annually increase the maximum amount of a qualified investment described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage equal to the increase in the consumer price index for the preceding calendar year.

(ii) After making an increase required by Subsection (1)(f)(i), the executive director shall:

(A) round the maximum amount of the qualified investments described in Subsections (1)(d) and (1)(e)(i) and (ii) increased under Subsection (1)(f)(i) to the nearest 10 dollar increment; and

(B) increase the maximum amount of the qualified investment described in Subsection (1)(e)(iii) so that the maximum amount of the qualified investment described in Subsection (1)(e)(iii) is equal to the product of:

(I) the maximum amount of the qualified investment described in Subsection (1)(e)(ii) as rounded under Subsection (1)(f)(ii)(A); and

(II) two.

(iii) For purposes of Subsections (1)(f)(i) and (ii), the executive director shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(g) For taxable years beginning on or after January 1, 2011, the executive director shall keep the previous year's maximum amount of a qualified investment described in Subsections (1)(d) and (1)(e)(i) and (ii) if the consumer price index for the preceding calendar year decreases.

(2) (a) Beneficiaries designated in account agreements must be designated after birth and before age 19 for an account owner to:

(i) subtract a qualified investment from income under Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) use a qualified investment as the basis for claiming a tax credit in accordance with Section 59-10-1017.

(b) Account owners may designate a beneficiary age 19 or older, but investments for that beneficiary are not eligible to be:

(i) subtracted from income under Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) used as the basis for claiming a tax credit in accordance with Section 59-10-1017.

(3) Each account agreement shall state clearly that there are no guarantees regarding money in the plan as to the return of principal and that losses could occur.

(4) Each account agreement shall provide that:

(a) a contributor to, or designated beneficiary under, an account agreement may not direct the investment of any contributions or earnings on contributions;

(b) any part of the money in any account may not be used as security for a loan; and

(c) an account owner may not borrow from the plan.

(5) The execution of an account agreement by the plan may not guarantee in any way that higher education costs will be equal to projections and estimates provided by the plan or that the beneficiary named in any account agreement will:

(a) be admitted to an institution of higher education;

(b) if admitted, be determined a resident for tuition purposes by the institution of higher education;

(c) be allowed to continue attendance at the institution of higher education following admission; or

(d) graduate from the institution of higher education.

(6) A beneficiary may be changed as permitted by the rules and regulations of the board upon written request of the account owner prior to the date of admission of any beneficiary under an account agreement by an institution of higher education so long as the substitute beneficiary is eligible for participation.

(7) An account agreement may be freely amended throughout the term of the account agreement in order to enable an account owner to increase or decrease the level of

participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.

(8) Each account agreement shall provide that:

(a) the account agreement may be canceled upon the terms and conditions, and upon payment of the fees and costs set forth and contained in the board's rules and regulations; and

(b) the executive director may amend the agreement unilaterally and retroactively, if necessary, to maintain the plan as a qualified tuition program under Section 529, Internal Revenue Code.

Section 18. Section **57-1-5** is amended to read:

57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of joint tenancy -- Tenants by the entirety -- Tenants holding as community property.

(1) (a) (i) Beginning on May 5, 1997, every ownership interest in real estate granted to two persons in their own right who are designated as husband and wife or other married couple in the granting documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in the grant to be otherwise.

(ii) Except as provided in Subsection (1)(a)(iii), joint tenancy may be established between two or more people.

(iii) Joint tenancy may not be established between a person and an entity or organization, including:

(A) a corporation;

(B) a trustee of a trust; or

(C) a partnership.

(iv) Joint tenancy may not be established between an entity or organization and another entity or organization.

(b) Every ownership interest in real estate that does not qualify for the joint tenancy presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest unless expressly declared in the grant to be otherwise.

(2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the survivor of them" or words of similar import means a joint tenancy.

(b) (i) Use of words "tenancy in common" or "with no rights of survivorship" or "undivided interest" or words of similar import declare a tenancy in common.

(ii) Use of words "and/or" in the context of an ownership interest declare a tenancy in common unless accompanied by joint tenancy language described in Subsection (2)(a), which creates a joint tenancy.

(3) A person who owns real property creates a joint tenancy in himself or herself and another or others:

(a) by making a transfer to himself or herself and another or others as joint tenants by use of the words as provided in Subsection (2)(a); or

(b) by conveying to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of the words as provided in Subsection (2)(a).

(4) In all cases, the interest of joint tenants shall be equal and undivided.

(5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide conveyance of the joint tenant's interest in property held in joint tenancy to himself or herself or another, the joint tenancy is severed and converted into a tenancy in common.

(b) If there is more than one joint tenant remaining after a joint tenant severs a joint tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in joint tenancy.

(6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.

(7) Tenants by the entirety are considered to be joint tenants.

(8) Tenants holding title as community property are considered to be joint tenants.

Section 19. Section **57-1-25** is amended to read:

57-1-25. Notice of trustee's sale -- Description of property -- Time and place of sale.

(1) The trustee shall give written notice of the time and place of sale particularly describing the property to be sold:

(a) by publication of the notice:

(i) (A) at least three times;

(B) once a week for three consecutive weeks;

(C) the last publication to be at least 10 days but not more than 30 days before the date

the sale is scheduled; and

(D) in a newspaper having a general circulation in each county in which the property to be sold, or some part of the property to be sold, is situated; and

(ii) in accordance with Section 45-1-101 for 30 days before the date the sale is scheduled;

(b) by posting the notice:

(i) at least 20 days before the date the sale is scheduled; and

(ii) (A) in some conspicuous place on the property to be sold; and

(B) at the office of the county recorder of each county in which the trust property, or some part of it, is located; and

(c) if the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property:

(i) by posting the notice, including the statement required under Subsection (3)(b):

(A) on the primary door of each dwelling unit on the property to be sold, if the property to be sold has fewer than nine dwelling units; or

(B) in at least two conspicuous places on the property to be sold, in addition to the posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more dwelling units; or

(ii) by mailing the notice, including the statement required under Subsection (3)(b), to the occupant of each dwelling unit on the property to be sold.

(2) (a) The sale shall be held at the time and place designated in the notice of sale.

(b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.

(c) The place of sale shall be clearly identified in the notice of sale under Subsection (1) and shall be at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located.

(3) (a) The notice of sale shall be in substantially the following form:

Notice of Trustee's Sale

The following described property will be sold at public auction to the highest bidder, payable in lawful money of the United States at the time of sale, at (insert location of sale) _____ on _____ (month\day\year), at ____m. of said day, for the purpose of foreclosing a trust deed originally executed by ____ (and ____, [~~his wife~~] spouse,) as trustors,

in favor of _____, covering real property located at _____, and more particularly described as:

(Insert legal description)

The current beneficiary of the trust deed is _____ and the record owners of the property as of the recording of the notice of default are _____ and _____.

Dated _____ (month\day\year).

Trustee

(b) If the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property, the notice required under Subsection (1)(c) shall include a statement, in at least 14-point font, substantially as follows:

"Notice to Tenant

As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured. If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the date you are served with a notice to vacate, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

(4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a defect in that notice may not be the basis for challenging or invalidating a trustee's sale.

(5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.

Section 20. Section 59-1-1404 is amended to read:

**59-1-1404. Definition -- Mailing procedures -- Rulemaking authority --
Commission mailing requirements.**

(1) As used in this section, "Section 7502, Internal Revenue Code" means:

(a) Section 7502, Internal Revenue Code, in effect for the taxable year; or

(b) a corresponding or comparable provision to Section 7502, Internal Revenue Code, as amended, redesignated, or reenacted.

(2) If the commission or a person is required to mail a document under this part:

(a) the commission or the person shall mail the document using:

(i) the United States Postal Service; or

(ii) a delivery service the commission describes or designates in accordance with any rules the commission makes as authorized by Subsection (3); and

(b) the document is considered to be mailed:

(i) for a document that is mailed using the method described in Subsection (2)(a)(i), on the date the document is postmarked; or

(ii) for a document that is mailed using the method described in Subsection (2)(a)(ii), on the date the delivery service records or marks the document as having been received by the delivery service for delivery in accordance with any rules the commission makes as authorized by Subsection (3).

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(a) describing or designating one or more delivery services the commission or a person may use to mail a document under this part if a delivery service the commission describes or specifies is consistent with the definition of "designated delivery service" in Section 7502, Internal Revenue Code; or

(b) providing procedures or requirements for determining the date a delivery service records or marks a document as having been received by the delivery service for delivery if those rules are consistent with Section 7502, Internal Revenue Code.

(4) Subject to Subsection (5), if the commission is required to mail a notice to a person under this part, the commission shall mail the notice to the person at the person's last-known address as shown on the records of the commission.

(5) In the case of a joint return filed by a husband and wife or other married couple

under Chapter 10, Individual Income Tax Act, if the commission is notified in writing by either spouse that separate residences have been established, the commission shall mail a duplicate of the joint notice to each spouse at each spouse's last-known address.

Section 21. Section **59-2-1109** is amended to read:

59-2-1109. Indigent persons -- Deferral or abatement -- Application -- County authority to make refunds.

(1) A person under the age of 65 years is not eligible for a deferral or abatement provided for poor people under Sections [59-2-1107](#) and [59-2-1108](#) unless:

- (a) the county finds that extreme hardship would prevail if the grants were not made; or
- (b) the person has a disability.

(2) (a) An application for the deferral or abatement shall be filed on or before September 1 with the county in which the property is located.

(b) The application shall include a signed statement setting forth the eligibility of the applicant for the deferral or abatement.

(c) Both [~~husband and wife~~] spouses shall sign the application if [~~the husband and wife~~] they seek a deferral or abatement on a residence:

- (i) in which they both reside; and
- (ii) which they own as joint tenants.

(d) A county may extend the deadline for filing under Subsection (2)(a) until December 31 if the county finds that good cause exists to extend the deadline.

(3) (a) For purposes of this Subsection (3):

(i) "Property taxes due" means the taxes due on a person's property:

- (A) for which an abatement is granted by a county under Section [59-2-1107](#); and
- (B) for the calendar year for which the abatement is granted.

(ii) "Property taxes paid" is an amount equal to the sum of:

(A) the amount of the property taxes the person paid for the taxable year for which the person is applying for the abatement; and

(B) the amount of the abatement the county grants under Section [59-2-1107](#).

(b) A county granting an abatement to a person under Section [59-2-1107](#) shall refund to that person an amount equal to the amount by which the person's property taxes paid exceed the person's property taxes due, if that amount is \$1 or more.

(4) For purposes of this section:

(a) a poor person is any person:

(i) whose total household income as defined in Section 59-2-1202 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);

(ii) who resides for not less than 10 months of each year in the residence for which the tax relief, deferral, or abatement is requested; and

(iii) who is unable to meet the tax assessed on the person's real property that is residential property as the tax becomes due; and

(b) "residence" includes a mobile home as defined under Section 70D-2-102.

(5) If the claimant is the grantor of a trust holding title to real or tangible personal property on which an abatement or deferral is claimed, the claimant may claim the portion of the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

(a) title to the portion of the trust will revert in the claimant upon the exercise of a power:

(i) by:

(A) the claimant as grantor of the trust;

(B) a nonadverse party; or

(C) both the claimant and a nonadverse party; and

(ii) regardless of whether the power is a power:

(A) to revoke;

(B) to terminate;

(C) to alter;

(D) to amend; or

(E) to appoint;

(b) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the abatement or deferral; and

(c) the claimant meets the requirements under this part for the abatement or deferral.

(6) The commission shall adopt rules to implement this section.

(7) Any poor person may qualify for:

(a) the deferral of taxes under Section 59-2-1108;
(b) if the person meets the requisites of this section, for the abatement of taxes under Section 59-2-1107; or

(c) both:

- (i) the deferral described in Subsection (7)(a); and
- (ii) the abatement described in Subsection (7)(b).

Section 22. Section 59-10-119 is amended to read:

59-10-119. Returns by a married couple if either is a nonresident.

(1) If the adjusted gross income of a husband and wife or other married couple who are both nonresidents of this state is reported or determined on separate federal individual income tax returns~~[, the husband's and wife's state taxable incomes in this state shall be separately determined.];~~

(a) each spouse's state taxable income shall be separately reported or determined; and

(b) if a spouse is required to file a return under this chapter, the spouse may not file a joint return under this chapter.

(2) If the adjusted gross income of a husband and wife or other married couple who are both nonresidents of this state is reported or determined on a joint federal individual income tax return~~[, the husband's and wife's tax shall be reported or determined in this state on a joint return.];~~

(a) the married couple's state taxable income shall be jointly reported or determined;

and

(b) if the married couple is required to file a return under this chapter, the return shall be a joint return.

(3) (a) ~~[If] Except as provided in Subsection (3)(b), if one spouse is a nonresident of this state and the other spouse is a resident of this state[, separate taxes shall be determined on each spouse's separate state taxable incomes on forms prescribed by the commission.];~~

(i) each spouse's state taxable income shall be separately reported or determined; and

(ii) if a spouse is required to file a return under this chapter, the spouse may not file a joint return under this chapter.

~~(b) [Notwithstanding Subsection (3)(a), a husband and wife]~~ A husband and wife or other married couple described in Subsection (3)(a) may elect to be considered to be residents

of this state for purposes of determining state taxable income for a taxable year.

(c) If one spouse who is a nonresident of this state and the other spouse who is a resident of this state file a joint federal income tax return, but determine state taxable income separately, the spouses shall compute their taxable incomes in this state as if their adjusted gross incomes had been determined separately.

(4) For purposes of this section:

(a) if individual spouses file separate returns under this chapter, the spouses' tax liability is several; or

(b) if a married couple files a joint return under this chapter, the individual spouses' tax liability is joint and several.

Section 23. Section **59-10-503** is amended to read:

59-10-503. Returns by a married couple.

~~[(1) A husband and wife may make a single return jointly with respect to the tax imposed by this chapter even though one of the spouses has neither gross income nor deductions, except as follows:]~~

(1) Except as provided in Subsection (2), (4), or (5), for purposes of this chapter, a husband and wife or other married couple may file a single return jointly even if one of the spouses does not have income, or an addition to or subtraction from income, in this state.

(2) A married couple described in Subsection (1) may not file a single return jointly under this chapter if:

(a) [No joint return shall be made if the husband and wife are] the married couple is not permitted to file a joint return for federal income tax purposes[-]; or

(b) [If] the federal income tax liability of [husband or wife] either spouse is determined on a separate return for federal income tax purposes[, the income tax liability of each spouse shall be determined on a separate return under this chapter].

[(c)] (3) If the federal income tax liabilities of [husband and wife] a married couple, other than a [husband and wife] married couple described in Subsection (1)(b), are determined on a joint [federal return, they] return for federal income tax purposes:

(a) the married couple shall file a joint return under this chapter; and [their tax liability shall be joint and several.];

(b) the married couple's tax liability under this chapter shall be joint and several.

1020 ~~[(d)]~~ (4) If neither spouse is required to file a federal income tax return and either or
1021 both are required to file an income tax return under this chapter~~[-they]~~;

1022 (a) the married couple may elect to file separate or joint returns; and [their tax liability
1023 ~~shall be several or joint and several, in accordance with the election made.]~~

1024 (b) (i) if the individual spouses elect to file separate returns under this chapter, the
1025 individual spouse's tax liability under this chapter is several; or

1026 (ii) if a married couple elects to file a joint return under this chapter, the couple's tax
1027 liability under this chapter is joint and several.

1028 (5) If one or both spouses are nonresidents, procedures and requirements for filing a
1029 return under this chapter are as provided in Section 59-10-119.

1030 ~~[(2) If either husband or wife is a resident and the other is a nonresident, they shall file~~
1031 ~~separate income tax returns in this state on such forms as may be required by the commission;~~
1032 ~~in which event their tax liability shall be several. They may elect to determine their joint~~
1033 ~~taxable income as if both were residents, in which event their tax liability shall be joint and~~
1034 ~~several.]~~

1035 Section 24. Section **59-10-1017** is amended to read:

1036 **59-10-1017. Utah Educational Savings Plan tax credit.**

1037 (1) As used in this section:

1038 (a) "Account owner" means the same as that term is defined in Section 53B-8a-102.

1039 (b) "Grantor trust" means the same as that term is defined in Section 53B-8a-102.

1040 (c) "Higher education costs" means the same as that term is defined in Section
1041 53B-8a-102.

1042 (d) "Maximum amount of a qualified investment for the taxable year" means, for a
1043 taxable year, the product of 5% and:

1044 (i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account
1045 owner, if that claimant, estate, or trust is other than husband and wife or other married account
1046 owners who file a single return jointly, the maximum amount of a qualified investment:

1047 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1048 (B) increased or kept for that taxable year in accordance with Subsections
1049 53B-8a-106(1)(f) and (g);

1050 (ii) subject to Subsection (1)(d)(iii), for claimants who are husband and wife or other

1051 married account owners who file a single return jointly, the maximum amount of a qualified
1052 investment:

1053 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and
1054 (B) increased or kept for that taxable year in accordance with Subsections
1055 53B-8a-106(1)(f) and (g); or
1056 (iii) for a grantor trust:

1057 (A) if the owner of the grantor trust has a single filing status or head of household
1058 filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or
1059 (B) if the owner of the grantor trust has a joint filing status as defined in Section
1060 59-10-1018, the amount described in Subsection (1)(d)(ii).

1061 (e) "Owner of the grantor trust" means the same as that term is defined in Section
1062 53B-8a-102.

1063 (f) "Qualified investment" means the same as that term is defined in Section
1064 53B-8a-102.

1065 (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of
1066 this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax
1067 credit equal to the product of:

1068 (a) the amount of a qualified investment made:
1069 (i) during the taxable year; and
1070 (ii) into an account owned by the claimant, estate, or trust; and
1071 (b) 5%.

1072 (3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may
1073 make a qualified investment described in Subsection (2).

1074 (4) A tax credit under this section may not be claimed with respect to any portion of a
1075 qualified investment described in Subsection (2) that a claimant, estate, trust, or person
1076 described in Subsection (3) deducts on a federal income tax return.

1077 (5) A tax credit under this section may not exceed the maximum amount of a qualified
1078 investment for the taxable year.

1079 (6) A tax credit under this section may not be carried forward or carried back.

1080 Section 25. Section 59-10-1018 is amended to read:

1081 **59-10-1018. Definitions -- Nonrefundable taxpayer tax credits.**

1082 (1) As used in this section:

1083 (a) "Dependent adult with a disability" means an individual who:

1084 (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the

1085 claimant's federal individual income tax return for the taxable year;

1086 (ii) is not the claimant or the claimant's spouse; and

1087 (iii) is:

1088 (A) 18 years of age or older;

1089 (B) eligible for services under Title 62A, Chapter 5, Services for People with

1090 Disabilities; and

1091 (C) not enrolled in an education program for students with disabilities that is

1092 authorized under Section [53A-15-301](#).

1093 (b) "Dependent child with a disability" means an individual 21 years of age or younger

1094 who:

1095 (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the

1096 claimant's federal individual income tax return for the taxable year;

1097 (ii) is not the claimant or the claimant's spouse; and

1098 (iii) is:

1099 (A) an eligible student with a disability; or

1100 (B) identified under guidelines of the Department of Health as qualified for Early

1101 Intervention or Infant Development Services.

1102 (c) "Eligible student with a disability" means an individual who is:

1103 (i) diagnosed by a school district representative under rules the State Board of

1104 Education adopts in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

1105 Act, as having a disability classified as autism, deafness, preschool developmental delay, dual

1106 sensory impairment, hearing impairment, intellectual disability, multidisability, orthopedic

1107 impairment, other health impairment, traumatic brain injury, or visual impairment;

1108 (ii) not receiving residential services from the Division of Services for People with

1109 Disabilities created under Section [62A-5-102](#) or a school established under Title 53A, Chapter

1110 25b, Utah Schools for the Deaf and the Blind; and

1111 (iii) (A) enrolled in an education program for students with disabilities that is

1112 authorized under Section [53A-15-301](#); or

1113 (B) a recipient of a scholarship awarded under Title 53A, Chapter 1a, Part 7, Carson
1114 Smith Scholarships for Students with Special Needs Act.

1115 (d) "Head of household filing status" means a head of household, as defined in Section
1116 2(b), Internal Revenue Code, who files a single federal individual income tax return for the
1117 taxable year.

1118 (e) "Joint filing status" means:

1119 (i) a husband and wife ~~[who file]~~ or other married couple that files a single return
1120 jointly under this chapter for a taxable year; or

1121 (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a
1122 single federal individual income tax return for the taxable year.

1123 (f) "Single filing status" means:

1124 (i) a single individual who files a single federal individual income tax return for the
1125 taxable year; or

1126 (ii) a married individual who:

1127 (A) does not file a single federal individual income tax return jointly with that married
1128 individual's spouse for the taxable year; and

1129 (B) files a single federal individual income tax return for the taxable year.

1130 (2) Except as provided in Section 59-10-1002.2, and subject to Subsections (3) through
1131 (5), a claimant may claim a nonrefundable tax credit against taxes otherwise due under this part
1132 equal to the sum of:

1133 (a) (i) for a claimant that deducts the standard deduction on the claimant's federal
1134 individual income tax return for the taxable year, 6% of the amount the claimant deducts as
1135 allowed as the standard deduction on the claimant's federal individual income tax return for
1136 that taxable year; or

1137 (ii) for a claimant that itemizes deductions on the claimant's federal individual income
1138 tax return for the taxable year, the product of:

1139 (A) the difference between:

1140 (I) the amount the claimant deducts as allowed as an itemized deduction on the
1141 claimant's federal individual income tax return for that taxable year; and

1142 (II) any amount of state or local income taxes the claimant deducts as allowed as an
1143 itemized deduction on the claimant's federal individual income tax return for that taxable year;

1144 and
1145 (B) 6%; and
1146 (b) the product of:
1147 (i) 75% of the total amount the claimant deducts as allowed as a personal exemption
1148 deduction on the claimant's federal individual income tax return for that taxable year, plus an
1149 additional 75% of the amount the claimant deducts as allowed as a personal exemption
1150 deduction on the claimant's federal individual income tax return for that taxable year with
1151 respect to each dependent adult with a disability or dependent child with a disability; and
1152 (ii) 6%.
1153 (3) A claimant may not carry forward or carry back a tax credit under this section.
1154 (4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar
1155 by which a claimant's state taxable income exceeds:
1156 (a) for a claimant who has a single filing status, \$12,000;
1157 (b) for a claimant who has a head of household filing status, \$18,000; or
1158 (c) for a claimant who has a joint filing status, \$24,000.
1159 (5) (a) For taxable years beginning on or after January 1, 2009, the commission shall
1160 increase or decrease the following dollar amounts by a percentage equal to the percentage
1161 difference between the consumer price index for the preceding calendar year and the consumer
1162 price index for calendar year 2007:
1163 (i) the dollar amount listed in Subsection (4)(a); and
1164 (ii) the dollar amount listed in Subsection (4)(b).
1165 (b) After the commission increases or decreases the dollar amounts listed in Subsection
1166 (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the
1167 nearest whole dollar.
1168 (c) After the commission rounds the dollar amounts as required by Subsection (5)(b),
1169 the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that
1170 the dollar amount listed in Subsection (4)(c) is equal to the product of:
1171 (i) the dollar amount listed in Subsection (4)(a); and
1172 (ii) two.
1173 (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer
1174 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

- 1175 Section 26. Section **59-10-1021** is amended to read:
- 1176 **59-10-1021. Nonrefundable medical care savings account tax credit.**
- 1177 (1) As used in this section:
- 1178 (a) "Account administrator" [~~is as~~] means the same as that term is defined in Section
- 1179 31A-32a-102.
- 1180 (b) "Account holder" [~~is as~~] means the same as that term is defined in Section
- 1181 31A-32a-102.
- 1182 (c) "Eligible medical expense" [~~is as~~] means the same as that term is defined in Section
- 1183 31A-32a-102.
- 1184 (d) "Eligible spouse claimants" means claimants who are spouses if:
- 1185 (i) the claimants file a single return jointly [~~as husband and wife~~];
- 1186 (ii) neither spouse is covered by:
- 1187 (A) health care insurance as defined in Section 31A-1-301; or
- 1188 (B) a self-funded plan that covers the other spouse; and
- 1189 (iii) each spouse is an account holder.
- 1190 (e) "Medical care savings account" [~~is as~~] means the same as that term is defined in
- 1191 Section 31A-32a-102.
- 1192 (2) Except as provided in Section 59-10-1002.2 and subject to Subsections (3) and (4),
- 1193 [~~for taxable years beginning on or after January 1, 2008,~~] a claimant may claim a
- 1194 nonrefundable tax credit for:
- 1195 (a) a contribution:
- 1196 (i) made during the taxable year;
- 1197 (ii) made to a medical care savings account in accordance with Title 31A, Chapter 32a,
- 1198 Medical Care Savings Account Act;
- 1199 (iii) that is accepted by the account administrator; and
- 1200 (iv) that the claimant does not deduct on the claimant's federal individual income tax
- 1201 return under Section 220, Internal Revenue Code; and
- 1202 (b) interest on the contribution described in Subsection (2)(a).
- 1203 (3) (a) For eligible spouse claimants, a tax credit under this section is equal to the
- 1204 product of:
- 1205 (i) the greater of:

1206 ~~[(A) the sum of:]~~
 1207 ~~[(H)]~~ (A) the amount contributed in accordance with Title 31A, Chapter 32a, Medical
 1208 Care Savings Account Act, by or on behalf of ~~[the husband]~~ either spouse, not to exceed the
 1209 amount described in Subsection 31A-32a-103(2)(a)(i); ~~[and]~~ or
 1210 ~~[(H) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care~~
 1211 ~~Savings Account Act, by or on behalf of the wife, not to exceed the amount described in~~
 1212 ~~Subsection 31A-32a-103(2)(a)(i); or]~~
 1213 (B) an amount equal to the sum of all eligible medical expenses paid by the eligible
 1214 spouse claimants on behalf of~~[:]~~ the eligible spouse claimants or a dependent of one or both of
 1215 the eligible spouse claimants; and
 1216 ~~[(I) the husband;]~~
 1217 ~~[(H) the wife; or]~~
 1218 ~~[(HH) a dependent of the:]~~
 1219 ~~[(Aa) husband; or]~~
 1220 ~~[(Bb) wife; and]~~
 1221 (ii) 5%.
 1222 (b) For a claimant other than eligible spouse claimants, a tax credit under this section is
 1223 equal to the product of:
 1224 (i) the greater of:
 1225 (A) the amount contributed by or on behalf of the claimant, not to exceed the amount
 1226 described in Subsection 31A-32a-103(2)(a)(i); or
 1227 (B) an amount equal to the sum of all eligible medical expenses paid by the claimant
 1228 on behalf of~~[: (H)]~~ the claimant~~[: (H)]~~, the claimant's spouse~~[:]~~, or ~~[(HH)]~~ a dependent of the
 1229 claimant; and
 1230 (ii) 5%.
 1231 (4) A tax credit under this section may not be carried forward or carried back.
 1232 Section 27. Section **59-10-1023** is amended to read:
 1233 **59-10-1023. Nonrefundable tax credit for amounts paid under a health benefit**
 1234 **plan.**
 1235 (1) As used in this section:
 1236 (a) "Claimant with dependents" means a claimant:

- 1237 (i) regardless of the claimant's filing status for purposes of filing a federal individual
1238 income tax return for the taxable year; and
- 1239 (ii) who claims one or more dependents under Section 151, Internal Revenue Code, as
1240 allowed on the claimant's federal individual income tax return for the taxable year.
- 1241 (b) "Eligible insured individual" means:
- 1242 (i) the claimant who is insured under a health benefit plan;
- 1243 (ii) the spouse of the claimant described in Subsection (1)(b)(i) if:
- 1244 (A) the claimant files a single return jointly under this chapter with the claimant's
1245 spouse for the taxable year; and
- 1246 (B) the spouse is insured under the health benefit plan described in Subsection
1247 (1)(b)(i); or
- 1248 (iii) a dependent of the claimant described in Subsection (1)(b)(i) if:
- 1249 (A) the claimant claims the dependent under Section 151, Internal Revenue Code, as
1250 allowed on the claimant's federal individual income tax return for the taxable year; and
- 1251 (B) the dependent is insured under the health benefit plan described in Subsection
1252 (1)(b)(i).
- 1253 (c) "Excluded expenses" means an amount a claimant pays for insurance offered under
1254 a health benefit plan for a taxable year if:
- 1255 (i) the claimant claims a tax credit for that amount under Section 35, Internal Revenue
1256 Code:
- 1257 (A) on the claimant's federal individual income tax return for the taxable year; and
- 1258 (B) with respect to an eligible insured individual;
- 1259 (ii) the claimant deducts that amount under Section 162 or 213, Internal Revenue
1260 Code:
- 1261 (A) on the claimant's federal individual income tax return for the taxable year; and
- 1262 (B) with respect to an eligible insured individual; or
- 1263 (iii) the claimant excludes that amount from gross income under Section 106 or 125,
1264 Internal Revenue Code, with respect to an eligible insured individual.
- 1265 (d) (i) "Health benefit plan" ~~[is as]~~ means the same as that term is defined in Section
1266 31A-1-301.
- 1267 (ii) "Health benefit plan" does not include equivalent self-insurance as defined by the

1268 Insurance Department by rule made in accordance with Title 63G, Chapter 3, Utah
1269 Administrative Rulemaking Act.

1270 (e) "Joint claimant with no dependents" means a husband and wife ~~[who]~~ or other
1271 married couple that:

1272 (i) ~~[file]~~ files a single return jointly under this chapter for the taxable year; and

1273 (ii) ~~[do]~~ does not claim a dependent under Section 151, Internal Revenue Code, on the
1274 ~~[husband's and wife's]~~ couple's federal individual income tax return for the taxable year.

1275 (f) "Single claimant with no dependents" means:

1276 (i) a single individual who:

1277 (A) files a single federal individual income tax return for the taxable year; and

1278 (B) does not claim a dependent under Section 151, Internal Revenue Code, on the
1279 single individual's federal individual income tax return for the taxable year;

1280 (ii) a head of household:

1281 (A) as defined in Section 2(b), Internal Revenue Code, who files a single federal
1282 individual income tax return for the taxable year; and

1283 (B) who does not claim a dependent under Section 151, Internal Revenue Code, on the
1284 head of household's federal individual income tax return for the taxable year; or

1285 (iii) a married individual who:

1286 (A) does not file a single federal individual income tax return jointly with that married
1287 individual's spouse for the taxable year; and

1288 (B) does not claim a dependent under Section 151, Internal Revenue Code, on that
1289 married individual's federal individual income tax return for the taxable year.

1290 (2) Subject to Subsection (3), and except as provided in Subsection (4), ~~[for taxable~~
1291 ~~years beginning on or after January 1, 2009,]~~ a claimant may claim a nonrefundable tax credit
1292 equal to the product of:

1293 (a) the difference between:

1294 (i) the total amount the claimant pays during the taxable year for:

1295 (A) insurance offered under a health benefit plan; and

1296 (B) an eligible insured individual; and

1297 (ii) excluded expenses; and

1298 (b) 5%.

(3) The maximum amount of a tax credit described in Subsection (2) a claimant may claim on a return for a taxable year is:

- (a) for a single claimant with no dependents, \$300;
- (b) for a joint claimant with no dependents, \$600; or
- (c) for a claimant with dependents, \$900.

(4) A claimant may not claim a tax credit under this section if the claimant is eligible to participate in insurance offered under a health benefit plan maintained and funded in whole or in part by:

- (a) the claimant's employer; or
- (b) another person's employer.

(5) A claimant may not carry forward or carry back a tax credit under this section.

Section 28. Section **59-10-1303** is amended to read:

59-10-1303. Contributions -- Amount -- Procedure for designating a contribution -- Joint return -- Contribution irrevocable.

(1) A resident or nonresident individual that makes a contribution under this part, other than Section [59-10-1311](#) or Section [59-10-1313](#), may designate as the contribution any whole dollar amount of \$1 or more.

(2) If a resident or nonresident individual designating a contribution under this part other than Section [59-10-1311](#):

(a) is owed an individual income tax refund for the taxable year, the amount of the contribution under this part shall be deducted from the resident or nonresident individual's individual income tax refund; or

(b) is not owed an individual income tax refund for the taxable year, the resident or nonresident individual may remit a contribution under this part with the resident or nonresident individual's individual income tax return, except as provided in Section [59-10-1313](#).

(3) If a husband and wife ~~[file]~~ or other married couple files a single individual income tax return jointly, a contribution under this part, other than Section [59-10-1311](#), shall be a joint contribution.

(4) Except as provided in Subsection [59-10-1313](#)(3)(c), a contribution under this part is irrevocable for the taxable year for which the resident or nonresident individual makes the contribution.

Section 29. Section **59-10-1313** is amended to read:

59-10-1313. Contribution to a Utah Educational Savings Plan account.

(1) (a) If a resident or nonresident individual is owed an individual income tax refund for the taxable year, the individual may designate on the resident or nonresident individual's income tax return a contribution to a Utah Educational Savings Plan account established under Title 53B, Chapter 8a, Utah Educational Savings Plan, as provided in this part.

(b) If a resident or nonresident individual is not owed an individual income tax refund for the taxable year, the individual may not designate on the resident or nonresident's individual income tax return a contribution to a Utah Educational Savings Plan account.

(2) (a) The commission shall send the contribution to the Utah Educational Savings Plan along with the following information:

(i) the amount of the individual income tax refund; and

(ii) the taxpayer's:

(A) name;

(B) Social Security number or taxpayer identification number; and

(C) address.

(b) The commission shall provide the taxpayer's telephone number and number of dependents claimed, as requested, to the Utah Educational Savings Plan.

(c) If a contribution to a Utah Educational Savings Plan account is designated in a single individual income tax return filed jointly by a husband and wife or other married couple, the commission shall send the information described under Subsection (2)(a) or (b) for both ~~[the husband and wife]~~ spouses to the Utah Educational Savings Plan.

(3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah Educational Savings Plan shall deposit the contribution into the account.

(b) If the taxpayer owns more than one Utah Educational Savings Plan account, the Utah Educational Savings Plan shall allocate the contribution among the accounts in equal amounts.

(c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah Educational Savings Plan shall send the taxpayer an account agreement.

(ii) If the taxpayer does not sign and return the account agreement by the date specified by the Utah Educational Savings Plan, the Utah Educational Savings Plan shall return the

1361 contribution to the taxpayer without any interest or earnings.

1362 (4) For the purpose of determining interest on an overpayment or refund under Section
1363 59-1-402, no interest accrues after the commission sends the contribution to the Utah
1364 Educational Savings Plan.

1365 Section 30. Section **62A-1-120** is amended to read:

1366 **62A-1-120. Utah Marriage Commission.**

1367 (1) As used in this section, "commission" means the Utah Marriage Commission
1368 created by this section.

1369 (2) There is created within the department the "Utah Marriage Commission."

1370 (3) The commission shall consist of 17 members appointed as follows:

1371 (a) two members of the Senate appointed by the president of the Senate;

1372 (b) two members of the House of Representatives appointed by the speaker of the
1373 House of Representatives;

1374 (c) six current or former representatives from marriage and family studies departments,
1375 social or behavioral sciences departments, health sciences departments, colleges of law, or
1376 other related and supporting departments at institutions of higher education in this state, as
1377 shall be appointed by the governor;

1378 (d) five representatives selected and appointed by the governor from among the
1379 following groups:

1380 (i) social workers who are or have been licensed under Title 58, Chapter 60, Part 2,
1381 Social Worker Licensing Act;

1382 (ii) psychologists who are or have been licensed under Title 58, Chapter 61,
1383 Psychologist Licensing Act;

1384 (iii) physicians who are or have been board certified in psychiatry and are or have been
1385 licensed under Title 58, Chapter 67, Utah Medical Practice Act;

1386 (iv) marriage and family therapists who are or have been licensed under Title 58,
1387 Chapter 60, Part 3, Marriage and Family Therapist Licensing Act;

1388 (v) representatives of faith communities;

1389 (vi) public health professionals;

1390 (vii) representatives of domestic violence prevention organizations; or

1391 (viii) legal professionals; and

(e) two representatives of the general public appointed by the members of the commission appointed under Subsections (3)(a) through (d).

(4) (a) A member appointed under Subsections (3)(c) through (e) shall serve for a term of four years. A member may be appointed for subsequent terms.

(b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) A commission member shall serve until a replacement is appointed and qualified.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment.

(5) (a) The commission shall annually elect a chair from its membership.

(b) The commission shall hold meetings as needed to carry out its duties. A meeting may be held on the call of the chair or a majority of the commission members.

(c) Nine commission members constitute a quorum and, if a quorum exists, the action of a majority of commission members present constitutes the action of the commission.

(6) (a) A commission member who is not a legislator may not receive compensation or benefits for the commission member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a commission member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(7) The department shall staff the commission.

(8) The commission shall:

(a) promote coalitions and collaborative efforts to uphold and encourage a strong and healthy culture of strong and lasting marriages and stable families;

(b) contribute to greater awareness of the importance of marriage and leading to reduced divorce and unwed parenthood in the state;

1423 (c) promote public policies that support marriage;
1424 (d) promote programs and activities that educate individuals and couples on how to
1425 achieve strong, successful, and lasting marriages, including promoting and assisting in the
1426 offering of:
1427 (i) events;
1428 (ii) classes and services, including those designed to promote strong, healthy, and
1429 lasting marriages and prevent domestic violence;
1430 (iii) marriage and relationship education conferences for the public and professionals;
1431 and
1432 (iv) enrichment seminars;
1433 (e) actively promote measures designed to maintain and strengthen marriage, family,
1434 and the relationships between husband and wife, or other spouses, and parents and children;
1435 and
1436 (f) support volunteerism and private financial contributions and grants in partnership
1437 with the commission and in support of the commission's purposes and activities for the benefit
1438 of the state as provided in this section.
1439 (9) Funding for the commission shall be as approved by the Legislature through annual
1440 appropriations and the added funding sought by the commission from private contributions and
1441 grants that support the duties of the commission described in Subsection (8).
1442 Section 31. Section **62A-11-111** is amended to read:
1443 **62A-11-111. Lien provisions.**
1444 Provisions for collection of any lien placed as a condition of eligibility for any federally
1445 or state-funded public assistance program are as follows:
1446 (1) Any assistance granted after July 1, 1953, to the spouse of an old-age recipient who
1447 was not eligible for old-age assistance but who participated in the assistance granted to the
1448 family is recoverable in the same manner as old-age assistance granted to the old-age recipient.
1449 (2) At the time of the settlement of a lien given as a condition of eligibility for the
1450 old-age assistance program, there shall be allowed a cash exemption of \$1,000, less any
1451 additional money invested by the department in the home of an old-age recipient or recipients
1452 of other assistance programs either as payment of taxes, home and lot improvements, or to
1453 protect the interest of the state in the property for necessary improvements to make the home

habitable, to be deducted from the market or appraised value of the real property. When it is necessary to sell property or to settle an estate the department may grant reasonable costs of sale and settlement of an estate as follows:

(a) When the total cost of probate, including the sale of property when it is sold, and the cost of burial and last illness do not exceed \$1,000, the exemption of \$1,000 shall be the total exemption, which shall be the only amount deductible from the market or appraised value of the property.

(b) Subject to Subsection (2)(c), when \$1,000 is not sufficient to pay for the costs of probate, the following expenditures are authorized:

- (i) cost of funeral expenses not exceeding \$1,500;
- (ii) costs of terminal illness, provided the medical expenses have not been paid from any state or federally-funded assistance program;
- (iii) realty fees, if any;
- (iv) costs of revenue stamps, if any;
- (v) costs of abstract or title insurance, whichever is the least costly;
- (vi) attorney fees not exceeding the recommended fee established by the Utah State Bar;
- (vii) administrator's fee not to exceed \$150;
- (viii) court costs; and
- (ix) delinquent taxes, if any.

(c) An attorney, who sells the property in an estate that the attorney is probating, is entitled to the lesser of:

- (i) a real estate fee; or
- (ii) an attorney fee.

(3) The amounts listed in Subsection (2)(b) are to be considered only when the total costs of probate exceed \$1,000, and those amounts are to be deducted from the market or appraised value of the property in lieu of the exemption of \$1,000 and are not in addition to the \$1,000 exemption.

(4) When both husband and wife, or both spouses, are recipients and one or both of them own an interest in real property, the lien attaches to the interests of both for the reimbursement of assistance received by either or both spouses. Only one exemption, as

provided in this section, is allowed.

(5) When a lien was executed by one party on property that is owned in joint tenancy with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy in common results, insofar as a department lien is affected, unless the recipients are husband and wife or other married couple. When recipients are husband and wife or other married couple who own property in joint tenancy with full rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a department lien might be affected, and settlement of the lien shall be in accordance with the provisions of Subsection (4).

(6) The amount of the lien given for old-age assistance shall be the total amount of assistance granted up to the market or appraised value of the real or personal property, less the amount of the legal maximum property limitations from the execution of the lien until settlement thereof. There shall be no exemption of any kind or nature allowed against real or personal property liens granted for old-age assistance except assistance in the form of medical care, and nursing home care, other types of congregate care, and similar plans for persons with a physical or mental disability.

(7) When it is necessary to sell property or to settle an estate, the department is authorized to approve payment of the reasonable costs of sale and settlement of an estate on which a lien has been given for old-age assistance.

(8) The amount of reimbursement of all liens held by the department shall be determined on the basis of the formulas described in this section, when they become due and payable.

(9) All lien agreements shall be recorded with the county recorder of the county in which the real property is located, and that recording has the same effect as a judgment lien on any real property in which the recipient has any title or interest. All such real property including but not limited to, joint tenancy interests, shall, from the time a lien agreement is recorded, be and become charged with a lien for all assistance received by the recipient or his spouse as provided in this section. That lien has priority over all unrecorded encumbrances. No fees or costs shall be paid for such recording.

(10) Liens shall become due and payable, and the department shall seek collection of each lien now held:

(a) when the property to which the lien attaches is transferred to a third party prior to

the recipient's death, provided, that if other property is purchased by the recipient to be used by the recipient as a home, the department may transfer the amount of the lien from the property sold to the property purchased;

(b) upon the death of the recipient and the recipient's spouse, if any. When the heirs or devisees of the property are also recipients of public assistance, or when other hardship circumstances exist, the department may postpone settlement of the lien if that would be in the best interest of the recipient and the state;

(c) when a recipient voluntarily offers to settle the lien; or

(d) when property subject to a lien is no longer used by a recipient and appears to be abandoned.

(11) When a lien becomes due and payable, a certificate in a form approved by the department certifying to the amount of assistance provided to the recipient and the amount of the lien, shall be mailed to the recipient, the recipient's heirs, or administrators of the estate, and the same shall be allowed, approved, filed, and paid as a preferred claim, as provided in Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The amount so certified constitutes the entire claim, as of the date of the certificate, against the real or personal property of the recipient or the recipient's spouse. Any person dealing with the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount of the existing lien against that real or personal property. That amount, however, shall increase by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six months after the lien becomes due and payable, or at the termination of probate proceedings, whichever occurs later.

(12) If heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department, with interest as provided in Subsection (11).

(13) All sums so recovered, except those credited to the federal government, shall be retained by the department.

(14) The department is empowered to accept voluntary conveyance of real or personal property in satisfaction of its interest therein. All property acquired by the department under the provisions of this section may be disposed of by public or private sale under rules

prescribed by the department. The department is authorized to execute and deliver any document necessary to convey title to all property that comes into its possession, as though the department constituted a corporate entity.

(15) Any real property acquired by the department, either by foreclosure or voluntary conveyance, is tax exempt, so long as it is so held.

Section 32. Section **75-2-802** is amended to read:

75-2-802. Effect of divorce, annulment, and decree of separation.

(1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the ~~[status of husband and wife]~~ marriage is not a divorce for purposes of this section.

(2) For purposes of Part 1, Intestate Succession, Part 2, Elective Share of Surviving Spouse, Part 3, Spouse and Children Unprovided for in Wills, and Part 4, Exempt Property and Allowances, and Section **75-3-203**, a surviving spouse does not include:

(a) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as ~~[husband and wife]~~ married;

(b) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(c) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Section 33. Section **75-2-804** is amended to read:

75-2-804. Definitions -- Revocation of probate and nonprobate transfers by divorce -- Effect of severance -- Revival -- Protection of payors, third parties, and bona fide purchasers -- Personal liability of recipient -- No revocation by other changes of circumstances.

(1) As used in this section:

(a) "Disposition or appointment of property" includes a transfer of an item of property

or any other benefit to a beneficiary designated in a governing instrument.

~~[(e)]~~ (b) "Divorced individual" includes an individual whose marriage has been annulled.

~~[(b)]~~ (c) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 75-2-802. A decree of separation that does not terminate the ~~[status of husband and wife]~~ marriage is not a divorce for purposes of this section.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate another in place of the individual's former spouse or in place of the individual's former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of

1609 appointment on the divorced individual's former spouse or on a relative of the divorced
1610 individual's former spouse; and

1611 (iii) nomination in a governing instrument, which nominates a divorced individual's
1612 former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary
1613 or representative capacity, including a personal representative, executor, trustee, conservator,
1614 agent, or guardian; and

1615 (b) severs the interests of the former spouses in property held by them at the time of the
1616 divorce or annulment as joint tenants with the right of survivorship, transforming the interests
1617 of the former spouses into tenancies in common.

1618 (3) A severance under Subsection (2)(b) does not affect any third-party interest in
1619 property acquired for value and in good faith reliance on an apparent title by survivorship in the
1620 survivor of the former spouses unless a writing declaring the severance has been noted,
1621 registered, filed, or recorded in records appropriate to the kind and location of the property,
1622 which are relied upon, in the ordinary course of transactions involving such property, as
1623 evidence of ownership.

1624 (4) Provisions of a governing instrument are given effect as if the former spouse and
1625 relatives of the former spouse disclaimed all provisions revoked by this section or, in the case
1626 of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and
1627 relatives of the former spouse died immediately before the divorce or annulment.

1628 (5) Provisions revoked solely by this section are revived by the divorced individual's
1629 remarriage to the former spouse or by a nullification of the divorce or annulment.

1630 (6) No change of circumstances other than as described in this section and in Section
1631 75-2-803 effects a revocation.

1632 (7) (a) A payor or other third party is not liable for having made a payment or
1633 transferred an item of property or any other benefit to a beneficiary designated in a governing
1634 instrument affected by a divorce, annulment, or remarriage, or for having taken any other
1635 action in good faith reliance on the validity of the governing instrument, before the payor or
1636 other third party received written notice of the divorce, annulment, or remarriage. A payor or
1637 other third party is liable for a payment made or other action taken after the payor or other third
1638 party received written notice of a claimed forfeiture or revocation under this section.

1639 (b) Written notice of the divorce, annulment, or remarriage under Subsection (7)(a)

shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit, nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Section 34. Section **76-2-302** is amended to read:

76-2-302. Compulsion.

(1) A person is not guilty of an offense ~~[when he]~~ if the person engaged in the proscribed conduct ~~[because he was coerced to do so]~~ under duress by the use or threatened imminent use of unlawful physical force ~~[upon him or a third person]~~, which force or threatened force a person of reasonable firmness in ~~[his]~~ the situation would not have resisted.

(2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly ~~[places himself in]~~ enters a situation in which it is probable that ~~[he]~~ the person will be subjected to duress.

~~[(3) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion or to any defense of compulsion except as in Subsection (1) provided.]~~

Section 35. Section **76-6-516** is amended to read:

76-6-516. Conveyance of real estate by married person without spouse's consent.

Any married ~~[man]~~ person who falsely represents himself or herself as unmarried and under such representation knowingly conveys or mortgages real estate ~~[situate]~~ situated in this state, without the assent or concurrence of ~~[his wife]~~ the person's spouse when ~~[such]~~ consent or concurrence is necessary to relinquish ~~[her]~~ the spouse's inchoate statutory interest ~~[therein]~~ in the real estate, is guilty of a felony of the third degree.

Section 36. Section **76-7-101** is amended to read:

76-7-101. Bigamy -- Defense.

(1) A person is guilty of bigamy when, knowing ~~[he]~~ the person has a ~~[husband or wife]~~ spouse or knowing the other person has a ~~[husband or wife]~~ spouse, the person purports to marry another person ~~[or cohabits with another person]~~.

(2) Bigamy is a felony of the third degree.

(3) It shall be a defense to bigamy that the accused reasonably believed ~~[he and the other person]~~ both parties were legally eligible to ~~[remarry]~~ marry.

Section 37. Section **77-1-6** is amended to read:

77-1-6. Rights of defendant.

(1) In criminal prosecutions the defendant is entitled:

- (a) to appear in person and defend in person or by counsel;
- (b) to receive a copy of the accusation filed against him or her;

- 1702 (c) to testify in his or her own behalf;
- 1703 (d) to be confronted by the witnesses against him or her;
- 1704 (e) to have compulsory process to insure the attendance of witnesses in his or her
- 1705 behalf;
- 1706 (f) to a speedy public trial by an impartial jury of the county or district where the
- 1707 offense is alleged to have been committed;
- 1708 (g) to the right of appeal in all cases; and
- 1709 (h) to be admitted to bail in accordance with provisions of law, or be entitled to a trial
- 1710 within 30 days after arraignment if unable to post bail and if the business of the court permits.
- 1711 (2) In addition:
- 1712 (a) ~~[No person shall]~~ A person may not be put twice in jeopardy for the same offense;
- 1713 (b) ~~[No]~~ An accused person ~~[shall]~~ may not, before final judgment, be compelled to
- 1714 advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or
- 1715 to pay the costs of those rights when received;
- 1716 (c) ~~[No person shall]~~ A person may not be compelled to give evidence against himself
- 1717 or herself;
- 1718 (d) A ~~[wife shall]~~ spouse may not be compelled to testify against his or her ~~[husband~~
- 1719 ~~nor a husband against his wife]~~ spouse; and
- 1720 (e) ~~[No person shall]~~ A person may not be convicted unless by verdict of a jury, or
- 1721 upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been
- 1722 waived or, in case of an infraction, upon a judgment by a magistrate.
- 1723 Section 38. Section **78B-1-137** is amended to read:
- 1724 **78B-1-137. Witnesses -- Privileged communications.**
- 1725 There are particular relations in which it is the policy of the law to encourage
- 1726 confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in
- 1727 the following cases:
- 1728 (1) (a) ~~[Neither a wife nor a husband may]~~ A spouse may not either during the marriage
- 1729 or afterwards be, without the consent of the other spouse, examined as to any communication
- 1730 made by one to the other during the marriage.
- 1731 (b) This exception does not apply:
- 1732 (i) to a civil action or proceeding by one spouse against the other;

(ii) to a criminal action or proceeding for a crime committed by one spouse against the other;

(iii) to the crime of deserting or neglecting to support a spouse or child;

(iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or

(v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, legal assistant, paralegal, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.

(3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

(4) A physician or surgeon cannot, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall be waived by the patient in an action in which the patient places the patient's medical condition at issue as an element or factor of the claim or defense. Under those circumstances, a physician or surgeon who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.

(5) A public officer cannot be examined as to communications made in official confidence when the public interests would suffer by the disclosure.

(6) A sexual assault counselor as defined in Section 77-38-203 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 77-38-203 made by the victim.

Section 39. Section 78B-3-101 is amended to read:

78B-3-101. Married couples -- Actions -- Defense -- Absent spouse.

(1) If a husband and wife [are] or other married couple is sued jointly, either or both may defend in each one's own right or for both parties.

(2) Either party to a marriage may sue and be sued in the same manner as if the person is unmarried.

(3) When a spouse has deserted the family, the remaining spouse may prosecute or defend in the absent spouse's name any action which the absent spouse might have prosecuted or defended. All powers and rights the absent spouse might have shall be extended to the remaining spouse.

Section 40. Section **78B-5-504** is amended to read:

78B-5-504. Declaration of homestead -- Filing -- Contents -- Failure to file -- Conveyance by married person -- No execution sale if bid less than exemption -- Redemption rights of judgment creditor.

An individual may select and claim a homestead by complying with the following requirements:

(1) Filing a signed and acknowledged declaration of homestead with the recorder of the county or counties in which the homestead claimant's property is located or serving a signed and acknowledged declaration of homestead upon the sheriff or other officer conducting an execution prior to the time stated in the notice of execution.

(2) The declaration of homestead shall contain:

(a) a statement that the claimant is entitled to an exemption and if the claimant is married a statement that the claimant's spouse has not filed a declaration of homestead;

(b) a description of the property subject to the homestead;

(c) an estimate of the cash value of the property; and

(d) a statement specifying the amount of the homestead claimed and stating the name, age, and address of any spouse and dependents claimed to determine the value of the homestead.

(3) If a declaration of homestead is not filed or served as provided in this section, title shall pass to the purchaser upon execution free and clear of all homestead rights.

(4) If an individual is married, no conveyance of or security interest in, or contract to convey or create a security interest in property recorded as a homestead prior to the time of the conveyance, security interest, or contract is valid, unless both the husband and wife, or both spouses, join in the execution of the conveyance, security interest, or contract.

(5) Property that includes a homestead may not be sold at execution if there is no bid

which exceeds the amount of the declared homestead exemption.

(6) If property that includes a homestead is sold under execution, the sale is subject to redemption by the judgment debtor as provided in Rule 69C of the Utah Rules of Civil Procedure. If there is a deficiency, the property may not be subject to another execution to cover the deficiency.

Section 41. Section **78B-6-114** is amended to read:

78B-6-114. Adoption by married persons -- Consent.

~~[(1)]~~ A married ~~[man]~~ person who is not lawfully separated from his ~~[wife]~~ or her spouse may not adopt a child without the consent of his ~~[wife]~~ or her spouse, if his ~~[wife]~~ or her spouse is capable of giving consent.

~~[(2) A married woman who is not lawfully separated from her husband may not adopt a child without his consent, if he is capable of giving his consent.]~~

Section 42. Section **78B-12-115** is amended to read:

78B-12-115. Married persons privileged communication inapplicable -- Competency of spouses.

Laws attaching a privilege against the disclosure of communications between husband and wife, or other married couple, are inapplicable under this chapter. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage.

Section 43. Section **78B-13-310** is amended to read:

78B-13-310. Hearing and order.

(1) Unless the court enters a temporary emergency order pursuant to Section **78B-13-204**, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(a) the child custody determination has not been registered and confirmed under Section **78B-13-305**, and that:

- (i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;
- (ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law; or
- (iii) the respondent was entitled to notice, but notice was not given in accordance with

the standards of Section 78B-13-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under Section 78B-13-305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

(2) The court shall award the fees, costs, and expenses authorized under Section 78B-13-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife, or other married couple, or parent and child may not be invoked in a proceeding under this chapter.

Section 44. Section 78B-14-316 is amended to read:

78B-14-316. Special rules of evidence and procedure.

(1) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(2) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from outside this state to a tribunal of this state

by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(9) The defense of immunity based on the relationship of husband and wife, or other married couple, or parent and child does not apply in a proceeding under this chapter.

(10) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Section 45. Repealer.

This bill repeals:

Section **30-1-4.1, Marriage recognition policy.**

Section **30-3-2, Right of husband to divorce.**

Legislative Review Note
Office of Legislative Research and General Counsel